

# **JUVENILE DELINQUENCY BENCHBOOK**

**Florida  
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**Office of the State Courts Administrator**

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# INTRODUCTION

Education enhances the knowledge and skills of the judiciary and therefore contributes to the administration of justice. To further assist in the administration of justice, the Office of the State Courts Administrator, Office of Court Improvement, has developed this benchbook to address juvenile delinquency in Florida. The benchbook was developed to assist both new and experienced judges in Florida who are assigned to hear juvenile delinquency cases.

The benchbook is organized into a 'General Topics' section followed by chapters corresponding with the juvenile delinquency hearings provided for in Chapter 985. Each hearing chapter also has a corresponding hearing benchcard. The General Topics section introduces many important ancillary issues that will be encountered by the court. The citations in this benchbook have been abbreviated to improve text flow. For example, a citation to section 985.01, Florida Statutes, will appear as § 985.01 and a citation to the Florida Rules of Juvenile Procedure 8.000 will appear as Rule 8.000.

Our office intends to update and supplement this book periodically. Accordingly, we invite suggestions regarding topics that need more detailed treatment and ways that this publication can be made more useful to judges hearing delinquency cases. Please provide comments and suggestions to Kathleen Tailer in the Office of Court Improvement, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1900, [Tailerk@flcourts.org](mailto:Tailerk@flcourts.org), or (850) 922-9337.

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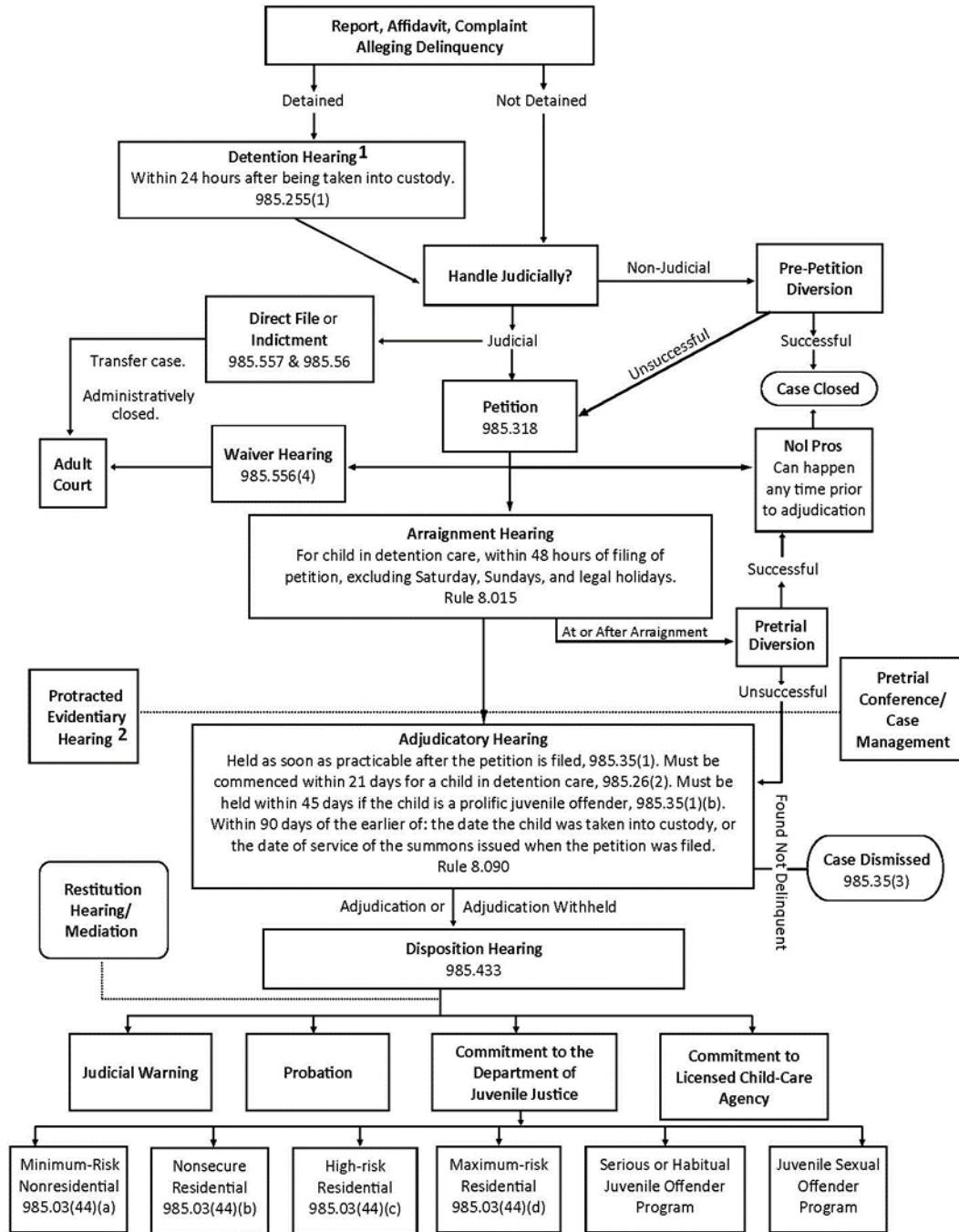
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## DELINQUENCY CASE MANAGEMENT FLOWCHART



1 Additional considerations are necessary for prolific juvenile offenders. Section 985.255(1)(j) and 985.26(2)(c)-(d).

2 These hearings are used by some circuits but not all.

- The following hearings can be heard at any/various times throughout a case: competency, contempt of court, correction of order, violation of probation.

## **OVERVIEW OF THE FLORIDA JUVENILE DELINQUENCY PROCESS**

The juvenile delinquency process in Florida is governed primarily by Chapter 985, Florida Statutes. The circuit courts have exclusive original jurisdiction over proceedings in which a child is alleged to have committed a delinquent act or violation of law. A child is defined as someone less than 18 years of age. The Florida Department of Juvenile Justice (DJJ) is the agency charged with administering the juvenile justice system in Florida. A child may be taken into custody by a law enforcement officer:

- Pursuant to an order of the court, based upon sworn testimony, either before or after a petition is filed,
- For a delinquent act or violation of law,
- For failing to appear at a court hearing after being properly noticed, or
- If the child is in violation of the conditions of the child's probation, supervised release nonsecure detention, post-commitment probation, or conditional release supervision; has absconded from nonresidential commitment; or has escaped from residential commitment. § 985.101(1).

DJJ makes recommendations to the state attorney, who then decides whether to proceed judicially or non-judicially. Generally, children that are charged by law enforcement with delinquent acts or violations of law are taken to a juvenile assessment center (JAC) for intake screening and to assess whether some type of detention is necessary. In counties that do not have an assessment center, the law enforcement officer calls a DJJ "on-call screener" to assess the juvenile's risk and determine if detention is necessary. If detention is necessary, the child will be delivered to the nearest JAC or DJJ facility. With some minor offenses, law enforcement may release the child to a parent or guardian and forward the charges to the local clerk of court and DJJ Probation Office.

### ***Intake and Referral***

When a child is turned over to DJJ, or an on-call screener is contacted, a juvenile probation officer (JPO) gathers information and reviews the case. As part of the intake process, the JPO completes a standardized Detention Risk Assessment Instrument (DRAI). DJJ makes the initial determination as to whether to release or detain the child based upon a risk assessment that includes the results of the DRAI.

### ***Detention Hearing***

If DJJ decides to detain the child, § 985.26 requires a detention hearing before the circuit court within 24 hours of being taken into custody. This hearing is analogous to the first appearance hearing in criminal law. The court must determine whether there is probable cause that the child committed a

delinquent act or violation of law and whether further detention is necessary. A court cannot further detain a child unless the court finds the statutory criteria set forth in § 985.255 are met. The child is then released or retained in detention pending further proceedings. A child cannot be detained in excess of 21 days without the commencement of an adjudicatory hearing unless an extension for good cause is shown. Some serious offenders can be held in secure detention for up to 30 days. § 985.26(2).

### ***Delinquency Petition***

If the State Attorney decides to proceed judicially, a delinquency petition will be filed. If the State Attorney decides to proceed non-judicially, the child will be placed into a diversionary program agreed upon by all parties. If the child successfully completes the agreed upon program, the delinquency case is dismissed.

### ***Arraignment Hearing***

If a delinquency petition is filed, the next step is an arraignment hearing where the child enters a plea of not guilty, guilty, or nolo contendere. The case then proceeds to either an adjudicatory hearing if the plea was not guilty or a disposition hearing if the plea was either guilty or nolo contendere.

### ***Adjudicatory Hearing***

At an adjudicatory hearing, the court must decide whether the child committed a delinquent act or violation of law. The adjudicatory hearing is analogous to the trial in criminal law. If it is found that a delinquent act was committed, the court can withhold adjudication or adjudicate the child delinquent, whereby the case proceeds to disposition.

### ***Disposition Hearing***

The disposition hearing is analogous to sentencing. The disposition hearing can immediately follow the adjudication or can be scheduled for a later date depending on whether a predisposition report (PDR) was prepared by DJJ. DJJ submits a predisposition report that contains their recommendations as to how the case should be disposed. The court can deviate from DJJ's recommendations but must make the appropriate written findings in the disposition order. Following any commitment, offenders can be placed on post-commitment supervision such as probation and/or conditional release.



## Common Acronyms

ACE	Adverse Childhood Experience
ADA	Americans with Disabilities Act
ADR	Alternative Dispute Resolution
APD	Agency for Persons with Disabilities
AHCA	Agency for Health Care Administration
CINS/FINS	Children in Need of Services, Families in Need of Services
CPI	Child Protective Investigator
CS/SB	Committee Substitute for a Senate Bill
CS/HB	Committee Substitute for a House Bill
DCA	District Court of Appeal
DCF	Florida Department of Children and Families
DEL	Sometimes used as shorthand for delinquency
DEP	Sometimes used as shorthand for dependency
DJJ	Florida Department of Juvenile Justice
DOH	Department of Health
DOAH	Division of Administrative Hearings
DOC	Department of Corrections
DOR	Department of Revenue
DRAI	Detention Risk Assessment Instrument
DV	Domestic Violence
ICWA	Indian Child Welfare Act
IEP	Individualized Education Plan
JAC	Juvenile Assessment Center
JPO	Juvenile Probation Officer
OCI	Office of Court Improvement
OSCA	Office of the State Courts Administrator
PDR	Predisposition Report
RPO	Risk Protection Order
SA or SAO	State Attorney
SIPP	Statewide Inpatient Psychiatric Program
SRO	School Resource Officer
UFC	Unified Family Court
VOP	Violation of Probation

## DETENTION HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 90.6063; 790.115(4); 790.22(8); 985.02(4); 985.033; 985.035; 985.036; 985.039; 985.101; 985.18; 985.24; 985.245; 985.25; 985.255; 985.26; 986.265; 985.27; 985.275; 985.335</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin. 2.545(d); 2.560</p> <p>Rules of Juvenile Procedure 8.003; 8.010; 8.013; 8.015; 8.100; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	<p>The purpose of the detention hearing is to determine whether probable cause exists that the child committed a delinquent act or violation of law and, if so, whether continued detention is necessary. § 985.255(3)(a); Rule 8.010(g).</p>
<b>TIME FRAME</b>	<p>The detention hearing must be held within 24 hours of the child being taken into custody. § § 985.255(1); 985.26(1).</p> <p>If a statutory need for detention is met but the court is unable to make a probable cause determination, the child may be retained in detention, and the hearing may be continued for up to 72 hours. Rule 8.010(h).</p> <p>Detention cannot exceed 21 days without the commencement of an adjudicatory hearing. § 985.26(2). For certain serious offenses, detention may be extended an additional 9 days. § 985.26(2)(b). There are specific detention requirements for Prolific Juvenile Offenders. § 985.26(2)(c).</p>
<b>BURDEN OF PROOF</b>	<p>The standard of proof for probable cause is that which is necessary for an arrest warrant. Rule 8.010(g)(1); § 901.02.</p>
<b>RULES OF EVIDENCE</b>	<p>All parties have the right to be heard. Rule 8.010(a). Sworn testimony of witnesses and all relevant and material evidence may be relied on to the extent of its probative value, even though it would not be competent at an adjudicatory hearing. Rule 8.010(g)(1)-(2).</p>
<b>RIGHT TO COUNSEL</b>	<p>The court must advise the child of the right to be represented by counsel and shall appoint counsel if the child qualifies. § 985.033; Rule 8.010(e); Rule 8.165. The court must determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have</p>

	counsel appointed pursuant to § 27.52. The child may waive counsel only after a meaningful opportunity to confer with counsel. If counsel is waived, it must be in writing, and the court must determine whether the waiver is knowing, intelligent, and voluntary. § 985.033; Rule 8.165(b).
<b>NEXT HEARING</b>	If a petition is filed and the child is being detained, the child shall be arraigned within 48 hours of the filing of the petition, excluding Saturdays, Sundays, or legal holidays. § 985.26(6) and Rule 8.015(a).

## **DETENTION HEARING BENCHCARD**

### **Generally**

- Determine whether an interpreter is needed to facilitate communication at the hearing.
- Verify that the proceeding is being recorded or transcribed.
- The purpose of the detention hearing is to determine whether there is probable cause that the child committed a delinquent act or violation of the law.
- If testimony will be offered, place all witnesses under oath.
- Have all the parties identify themselves for the record with full name and current address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the victim and/or the victim's parents, guardian, lawful representative, or next of kin have been informed of the date and time of the hearing.
- Determine whether the child, or his or her family, is involved in other court proceedings and if a Notice of Related Cases form as required by Rule 2.545(d) or a Cover Sheet for Family Court Cases as required by Rule 8.003 is, or should be, filed in the case. Consider how to consolidate or coordinate the related cases.

### **Advise of Rights**

- Determine whether the child is represented by counsel.
- Advise the child of his or her right to counsel and determine whether the right is understood.
- If the child and his or her parents are indigent, advise the child that he or she has the right to have counsel appointed.
- If the child does not have counsel, appoint counsel as necessary unless waived in writing. Waiver of counsel can only occur after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If the child waives counsel, determine that the waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent and that anything the child says may be used against him or her.

- If the child's parent, custodian, or counsel is not present, advise the child of his or her right to communicate with them, and if necessary, that reasonable means will be provided to do so.
- Advise the child of the charges.
- Advise the child of the reasons why continued detention has been requested.

### **Probable Cause Determination**

- Explain to the child that the standard of proof is whether the court, based on the information before it, "reasonably believes that the person complained against has committed an offense" within the court's jurisdiction.
- If the court finds no probable cause, the child must be released from detention.
- If probable cause cannot be determined, but a statutory need for detention exists, the court may continue the detention hearing for up to 72 hours on a showing of good cause.
- If there is probable cause, determine whether continued detention is necessary. Review documents such as the DRAI, DJJ's detention recommendations, and the detention petition.
- Special detention criteria are required for children who are charged with acts of domestic violence, possessing or discharging a firearm on school property, illegal possession of a firearm, or if the child qualifies as a Prolific Juvenile Offender.
- If there is probable cause and if detention is warranted, explain to the child what level of detention he or she will be under and the reasons for the detention determination.
- If there is probable cause and if the child is under supervised release, explain what that means and what is expected of the child.

### **Set an Arraignment Hearing**

- The hearing must be within 48 hours of the filing of a delinquency petition, excluding Saturdays, Sundays, or legal holidays.

### **Requirements for Written Order of Detention**

- State the name and address of the child or, if unknown, designate the child by a name or description that can identify him or her with reasonable certainty.
- State the age and sex of the child. If the age is unknown, state that the child is believed to be of an age that makes him or her subject to the juvenile proceedings.
- Order that the child shall be held in detention and state the reasons

therefore, or, if appropriate, order that the child be released from detention and returned to his or her nonresidential commitment program.

- Make a finding of probable cause or that such a finding cannot be made at this time and that the case is continued for such a determination within 72 hours of the child being taken into custody.
- Designate the place of detention or person or agency responsible for supervision and any special conditions.
- State the date and time the order was issued, the county and court from where it was issued, and the date and time the child was taken into custody.
- Make a finding regarding costs of supervision and care.
- Order that child to be released no later than 5:00 p.m. on the last day of the specified statutory detention period unless a continuance has been granted for good cause.
- Set the next detention hearing date if an extension is granted.
- Set a date for an arraignment hearing.

## DETENTION HEARING OUTLINE

### Generally

- **Interpreter Determination**

If the child is deaf, a non-English speaker, or has limited English proficiency, the court must determine whether an interpreter is needed to facilitate communication at the hearing. Check for prior notification of the need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6); Rule 2.560. If an interpreter has not been pre-selected, work with court administration to provide a qualified interpreter. § 90.6063(3)(b). If no qualified interpreter is available, the court may appoint a non-qualified interpreter upon a finding of good cause, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e). Verify that the child knows that he or she is allowed to object to the proposed appointment of a non-qualified interpreter. See General Topics for more information on interpreters.

- **Recording**

A record of all hearings must be made by an official court reporter, a court-approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

Explain the purpose of the detention hearing. The purpose of the detention hearing is to determine whether there is probable cause that the child committed a delinquent act or violation of the law. Rule 8.010(g)(1). If the court finds probable cause, then the court must determine what, if any, detention is necessary. § 985.255(3)(a); Rule 8.010(h). When law enforcement turns a child over to DJJ, the department will make the initial determination of whether to place the child into detention care based on its review of all available information and the Detention Risk Assessment Instrument (DRAI). § 985.245.

- **Hearing Timeframe; Standard of Proof**

Any child being detained must have a detention hearing within 24 hours of being taken into custody, and no child can be detained longer than 24 hours unless the circuit court holds a detention hearing and either enters a detention order or continues the hearing for up to 72 hours on a showing of good cause. § 985.26; Rule 8.013(a). No detention order can be entered without a hearing at which all parties have an opportunity to be heard on the necessity for the child to be held in detention unless the court finds that the parent or custodian cannot be

located or the child's mental health or physical condition is such that a court appearance is not in the child's best interest. Rule 8.010(a). The court generally decides whether there is probable cause based upon sworn statements or testimony presented by the State. The standard of proof is the same as for an arrest warrant. Rule 8.010(g)(1).

- **Detention Issues**

The court must make a detention determination based upon the statutory criteria of §§ 985.24 and 985.255. The court must use the results of the risk assessment performed by the department and, based on the statutory criteria, shall determine the need for continued detention. § 985.255(3)(a). If the court orders a placement more restrictive than indicated in the risk assessment instrument, the court must state, in writing, clear and convincing reasons for the placement. § 985.255(3)(b). Detention cannot exceed 21 days without the commencement of an adjudicatory hearing unless an extension of time for good cause is shown. However, some serious offenders can be held in secure detention for up to 30 days if the offense is one that would be a capital felony, life felony, felony of the first degree, or felony of the second degree that involves violence against an individual if committed by an adult. § 985.26(2)(b). A prolific juvenile offender under s. 985.255(1)(f) who is taken into custody for a violation of the conditions of his or her nonsecure detention must be held in secure detention until a detention hearing is held. § 985.26(2)(d).

If secure detention care is ordered by the court, it must be authorized under § 985.26(2)(c) and may not exceed 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court as allowed by law. Under no circumstances may a child alleged to be dependent under Chapter 39 be placed into or held in secure detention. § 985.24(3).

- **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the court and the record. Delinquency hearings are open to the public; however, the court, in its discretion, may close the hearing to the public when the public interest and the welfare of the child are best served by doing so. § 985.035.

- **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Rule 8.010(d) requires that the DJJ intake officer must make a diligent effort to notify the parent or custodian of the time and place of the detention hearing. Notice may be by the most expeditious method available. The child has a right to speak with any



absent parent or guardian, and, if necessary, reasonable means should be provided to do so. Rule 8.010(f)(3). However, the failure to notice or the nonattendance of the parent or guardian does not invalidate the hearing or the detention order. Rule 8.010(d). A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search, following a detailed and thorough list of sources he or she must check before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

- Victims and their family members or lawful representatives have a right to be informed of, to be present during, and to be heard when relevant at all crucial stages of proceedings involving the accused juvenile. § 985.036.

- **Place Any Witnesses Under Oath**

The court should place any witnesses under oath. Rule 8.010(g)(2). Prior to the examination of any witnesses, any party may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule 8.100(d).

- **Other Proceedings Determination**

Determine whether the child is involved in other court proceedings. If the child or his or her family is involved in other court proceedings, determine whether a Notice of Related Cases form as required by Rule 2.545(d) or a Cover Sheet for Family Court Cases as required by Rule 8.003, is or should be, filed in the case. Consider how to consolidate or coordinate the related cases.

## **Advise of Rights**

A child in delinquency proceedings is generally afforded the same Constitutional rights as adults in criminal proceedings. The one notable exception is that the child is not entitled to a jury trial. Rules 8.010(e) and (f) set out the rights the child must be advised of at the detention hearing.

- **Right to be Represented by Counsel**

- Advise the child of the right to counsel. Rule 8.010(e). The child must be advised of the right to counsel at the detention hearing.
- A child is entitled to representation by legal counsel at all stages of any delinquency court proceeding. § 985.033(1). If the child and the parents or other legal guardian are indigent and unable to employ counsel for the child, the court shall appoint counsel pursuant to § 27.52.

- If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).
  - If indigent, advise of the right to have counsel appointed. The child must be advised that if he or she is insolvent, the child has the right to have counsel appointed by the court in accordance with § 27.52.
  - The Court must determine whether the right to counsel is understood. The court must make a specific inquiry to determine whether the child understands this right. Rule 8.165. No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature or complexity of the case, or other factors. Rule 8.165(b)(4).
  - The waiver of counsel can only occur after the child has had a meaningful opportunity to confer with counsel regarding any factors that would assist the child in making the decision to waive counsel, and the waiver must be in writing. Rule 8.165(a). If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. Rule 8.165(b). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1). The court must inquire whether the child understands this right.
- **Right to Know Charges**  
Advise the child of the nature of the charges for which he or she was taken into custody. Rule 8.010(f)(1). The child also has the right to review the information used to determine the charges.
  - **Right to Remain Silent**

The child must be advised that he or she has the right to remain silent and that anything that the child says can be used against him or her. Rule 8.010(f)(2).

- **Right to Communicate**

If the child's parent, custodian, or counsel is not present, advise the child of his or her right to communicate with them, and if necessary, that reasonable means to do so will be provided to the child. Rule 8.010(f)(3).

- **Right to Know why Continued Detention is Requested**

Advise the child of the reasons continued detention is requested. Rule 8.010(f)(4).

## **Probable Cause Determination**

The court may base its probable cause determination on a sworn complaint, affidavit, deposition under oath, or testimony under oath properly recorded. Rule 8.010(g). Additionally, evidence may be considered to the extent of its probative value even though it would not be competent at an adjudicatory hearing. Rule 8.010(g)(2).

- **Standard of Proof**

The standard of proof necessary for determining probable cause is the same standard used for an arrest warrant. Rule 8.010(g)(1). The standard of proof for an arrest warrant is whether the judge, based on the information before him or her, reasonably believes that the person complained against has committed an offense within the court's jurisdiction. § 901.02(1).

- **Probable Cause Determination**

**If no probable cause**, the child must be released from detention. Rule 8.010(h). The release of the child based upon a finding that no probable cause exists does not prohibit the filing of a delinquency petition or further delinquency proceedings. Rule 8.010(h).

**If probable cause cannot be determined**, but a statutory need for detention exists, the court may continue the detention hearing for up to 72 hours. Rule 8.010(h). If the court finds that one or more of the statutory needs of detention exists but is unable to make a finding on the existence of probable cause, it may retain the child in detention and continue the hearing for the purpose of determining the existence of probable cause to a time within 72 hours of the time the child was taken into custody. The court may, on a showing of good cause, continue the hearing a second time for not more than 24 hours beyond the 72-hour period. Rule 8.010(h).

**If probable cause is found**, the court must enter an order making such a finding and may, if other statutory needs of detention exist, retain the child in detention. Rule 8.010(h). The court may continue or modify the current detention placement. DJJ will make recommendations to the court regarding the level of detention and placement. The court's decisions must be based on the results of the Detention Risk Assessment Instrument (DRAI) performed by the juvenile probation officer and the statutory detention criteria. § 985.245. The court should review the DRAI and correct any mistakes made in calculating the DRAI score. § 985.245(3).

- **Additional Acts while under Supervision**

One of the reasons a court may order continued detention is if a child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program. § 985.255(1)(a). For a child who is under the supervision of the department and who is charged with committing a new offense, the detention risk assessment instrument may be completed and scored based on the underlying charge for which the child was placed under the supervision of the department. § 985.245(4).

- **Continued Detention**

Section 985.255 sets forth the statutory reasons to keep a child in detention care. See General Topics for more detailed information on detention criteria. Special detention criteria are required for children who are charged with acts of domestic violence, possessing or discharging a firearm on school property, illegal possession of a firearm, or if the child qualifies as a Prolific Juvenile Offender.

- **If an Answer is Filed**

An answer to the petition is not required; any matters that might be set forth in an answer may be plead orally before the court. If the child, joined by a parent or the child's counsel, files an answer to the petition that admits to the allegations of the petition, the court must verify that the answer acknowledges that the child was advised of his or her right to counsel, right to remain silent, and of the possible dispositions available to the court. § 985.335. The answer must also provide a waiver of the adjudicatory hearing, a statement of consent to an order of adjudication, and an authorization for the court to proceed with a disposition hearing. § 985.335. The court should file an order of adjudication and set the disposition hearing at the earliest practicable time that allows for the completion of the predisposition report. § 985.335.

## Set Arraignment Hearing

The arraignment hearing shall be within 48 hours of the filing of a delinquency petition, excluding Saturdays, Sundays, or legal holidays. Rule 8.015(a). The child must be given notice of the arraignment; however, a personal appearance by the child before the court shall remove the necessity of the serving process on him or her. Rule 8.015(b)(1).

## Requirements for Written Order of Detention

- **The court may be presented with a detention order prepared by the State Attorney or may draft the order in court. Any detention order must be authorized by the criteria set forth in §§ 985.24 and 985.255.**
  - **Name and address.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty. Rule 8.013(c)(2).
  - **Age and sex.** State the age and sex of the child. If the age is unknown, state that the child is believed to be of an age that makes him or her subject to juvenile proceedings. Rule 8.013(c)(3).
  - **Waiver of Counsel.** If counsel is waived, make findings that the waiver was knowing, intelligent, and voluntary. Rule 8.165.
  - **Detention Order.** Order that the child be held in detention and state the reasons therefore, or, if appropriate, order the release of the child and the return to his or her nonresidential commitment program. Rule 8.013(c)(4).
  - **Probable cause finding.** Make a finding that probable cause exists or that such a finding cannot be made at this time and that the case is continued for such a determination within 72 hours of the child being taken into custody unless this time is extended by the court for good cause shown for not longer than an additional 24 hours. Rule 8.013(c)(5).
  - **Detention location designation.** Designate the place where the child is to be detained or the person or agency that will be responsible for the detention and state any special conditions found to be necessary. Rule 8.013(c)(6).
  - **Date and time.** State the date and time the order is issued, the county and court from where issued, and the date and time the child was taken into custody. Rule 8.013(c)(7).
  - **Release instructions.** Order a specific release time, or that the child is to be released no later than 5:00 p.m. on the last day of the specified statutory detention period unless a continuance has been granted for good cause. Rule 8.013(c)(8); § 985.255(3)(c). Except as provided in §§790.22(8) or 985.27, when a child is placed into secure or non-secure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the

court order must include specific instructions that direct the release of the child from such placement no later than 5:00 p.m. on the last day of the detention period specified in § § 985.26 or 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under § 985.26(4).

- **Sign the order.** The order must be signed by the court with the title of office. Rule 8.013(c)(9).
- **Finding of cost.** At any detention or disposition hearing, the court shall receive information regarding the ability of the parent of a child who is being placed under the supervision or care of the department to pay for the costs of care or supervision and whether the payment of such costs or fees will create a significant financial hardship. The court may apportion the obligation for the fee to each parent in a manner it deems appropriate; however, the total amount of the daily fee may not exceed the amounts specified in § 985.039. Any finding made by the court as to the ability of the parent to pay such fee, including any finding of indigency or significant financial hardship, shall be in writing and shall contain a detailed description of the facts supporting such a finding. If the court makes a finding of indigency and significant financial hardship, the court shall waive the fee or reduce it to an amount deemed appropriate. The court must make a finding regarding the costs of supervision and care or make a finding as to any reduction or waiver of costs, including therein the reasons for such a finding. § 985.039. See General Topics for more information on costs.
- **Set next hearing.** Set the next hearing date if an extension under Rule 8.010(h) is granted. If no extension is granted, set the date for the arraignment hearing. Rule 8.015(a).

## ARRAIGNMENT HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 90.6063; 741.28; 985.033; 985.035; 985.036; 985.039; 985.185; 985.24; 985.255; 985.26; 985.318; 985.335</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin. 2.545(d); 2.560</p> <p>Rules of Juvenile Procedure 8.003; 8.010; 8.015; 8.035; 8.070; 8.075; 8.080; 8.090; 8.100; 8.110; 8.165</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	The purpose of the arraignment hearing is for the child to enter a plea in response to the delinquency petition. Rule 8.070. This hearing is similar to an arraignment in criminal court.
<b>TIME FRAME</b>	If a child is detained, the arraignment hearing must be held within 48 hours of the filing of the delinquency petition, excluding Saturdays, Sundays, and legal holidays. § 985.26(6); Rule 8.015(a).
<b>BURDEN OF PROOF</b>	There is no burden of proof at an arraignment hearing. The delinquency petition must be reviewed to determine whether it states a <i>prima facie</i> case for delinquency if there has been no detention hearing. § 985.13.
<b>RULES OF EVIDENCE</b>	No evidence is submitted at an arraignment hearing.
<b>RIGHT TO COUNSEL</b>	The court must advise the child of his or her right to counsel and determine whether the right is understood. § 985.033; Rule 8.165. The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with § 27.52. If counsel is waived after a meaningful opportunity to confer with counsel, the court must determine whether the waiver is knowing, intelligent, and voluntary. <u>The waiver must be in writing.</u> § 985.033; Rule 8.165(b).
<b>NEXT HEARING</b>	<b>If child pleads not guilty:</b> Adjudicatory hearing must commence as soon as practicable and within 90 days of the earlier of the child being taken into custody or the date of service of summons issued when the petition was filed § 985.35; Rule 8.090. If the child is detained, the adjudicatory hearing must commence within 21 days of the child being taken into custody. § 985.26(2)(a) and §

	<p>985.35(1)(a). A prolific juvenile offender in secure detention must also be brought to hearing within 21 days. § 985.26(2)(c). A prolific juvenile offender in supervised release must be brought to hearing within 45 days of the child being taken into custody.</p> <p>§ 985.35(1).</p> <p><b>If child pleads guilty or nolo contendere:</b></p> <p>If the child has waived the right to counsel, the written waiver shall also be submitted to the court in the presence of a parent, legal custodian, responsible adult relative, or attorney assigned by the court to assist the child. The assigned attorney shall verify on the written waiver and on the record that the child's decision to waive counsel has been discussed with the child and appears to be knowing and voluntary. Rule 8.165(b)(3).</p> <p>A disposition hearing shall be set at the earliest practicable time that will allow for the completion of the predisposition report. § 985.335; Rule 8.070. If the predisposition report is available at the time the plea is taken, then the court may proceed with disposition pursuant to § 985.433 and Rule 8.115.</p>
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## **ARRAIGNMENT HEARING BENCHCARD**

### **Generally**

- Determine whether an interpreter is needed to facilitate communications at the hearing.
- Verify that the proceeding is being recorded or transcribed.
- Inform the child that the purpose of the arraignment hearing is for the child to enter a plea of not guilty, guilty, or nolo contendere to the delinquency petition filed by the state attorney.
- Place the child under oath.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that the DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the hearing. Failure of notice to the parent or guardian, or nonattendance of the parent or guardian at the arraignment hearing of a detained child, shall not invalidate the proceeding.
- Determine whether the victim and/or the victim's parents, guardian, lawful representative, or next of kin has been informed of the date and time of the hearing.
- Determine whether the child, or his or her family, is involved in other court proceedings and if a Notice of Related Cases form as required by Rule 2.545(d) and Rule 8.003 is, or should be, filed in the case. Consider how to consolidate or coordinate the related cases.

### **Advise of Rights**

- Determine whether the child is represented by counsel.
- If the child appears without counsel, advise the child of his or her right to counsel and determine whether the right is understood.
- If the child and child's parents or guardians are indigent, advise of the right to have counsel appointed.
- If the child does not have counsel, appoint counsel as necessary unless waived in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary.

- Advise the child of the right to remain silent and that anything the child says may be used against him or her.

### **Review Delinquency Petition**

- Review the delinquency petition to determine whether the petition states a prima facie case of delinquency.

### **Entrance of a Plea**

- Explain to the child that a plea is an answer to the complaint brought against them.
- Do not accept any plea without first determining that there is a factual basis for the plea and that the plea is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of the plea.
- Verify that the child understands that he or she may plead not guilty, guilty, nolo contendere, or may remain silent and refrain from making a plea. If the child remains silent or pleads evasively, the court shall enter a plea of not guilty for the child.
- If the plea is not guilty, the case proceeds to an adjudicatory hearing. Confirm that the child knows the date of the adjudicatory hearing and what is expected of the child.
- If a guilty or nolo contendere plea is accepted by the court, the case proceeds to a disposition hearing.

### **Set Next Hearing**

- If the plea was not guilty, set the adjudicatory hearing for as soon as practicable. The adjudicatory hearing must begin within 90 days of either the child being taken into custody or the date of service of summons issued when the petition was filed, whichever is earliest. § 985.35; Rule 8.090. If the child is detained, the adjudicatory hearing must commence within 21 days of the child being taken into custody. § 985.26(2)(a) and § 985.35(1)(a). A prolific juvenile offender in secure detention must also be brought to hearing within 21 days. § 985.26(2)(c). A prolific juvenile offender on supervised release must be brought to hearing within 45 days of the child being taken into custody. § 985.35(1)(b).
- If the plea was nolo contendere or guilty, the disposition hearing shall be set at the earliest practicable time that will allow for the completion of the predisposition report. If the predisposition report is available at the time the plea is taken, then the court may proceed with disposition pursuant to § 985.433 and Rule 8.115.

### **Determine Detention Pending Disposition**

- If the child was held in detention prior to the arraignment hearing, the court will have to determine whether continued detention is necessary pending disposition. Special detention criteria exist if the child is a prolific juvenile offender or is awaiting placement in a commitment program.

## ARRAIGNMENT HEARING OUTLINE

### Generally

- **Interpreter Determination**

If the child, the parent, or legal guardian is deaf, a non-English speaker, or has limited English proficiency, the court must determine whether an interpreter is needed to facilitate communication at the hearing. Check for prior notification of a need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6); Rule 2.560. If an interpreter has not been pre-selected, work with court administration to provide a qualified interpreter. § 90.6063(3)(b). If no qualified interpreter is available, the court may appoint a non-qualified interpreter upon a finding of good cause, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e). Verify that the child knows that he or she is allowed to object to the proposed appointment of a non-qualified interpreter. See General Topics for more information on interpreters.

- **Recording**

A record of all hearings must be made by an official court reporter, a court-approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

Explain to the child that the purpose of the arraignment hearing is to provide an opportunity for the child to enter a plea of not guilty, guilty, or nolo contendere to the delinquency petition filed by the state attorney. If the child is detained, the arraignment hearing must take place within 48 hours of the filing of the delinquency petition, excluding Saturdays, Sundays, and legal holidays. § 985.26(6); Rule 8.015(a).

- **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. § 985.035.

- **Notice Assessment**

Determine steps taken to locate and notice any identified and absent parents or guardians of the arraignment hearing. Parents or guardians should be notified of the arraignment hearing. Diligent efforts must be made to notify the parents or guardian of the child of the arraignment hearing. Rule 8.015(b)(3). However, failure of notice or nonattendance

does not invalidate the hearing. Rule 8.015(b)(4). A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search, following a detailed and thorough list of sources to check before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

Victims and their family members or lawful representatives have a right to be informed of, to be present during, and to be heard when relevant at all crucial stages of proceedings involving the accused juvenile. § 985.036.

- **Place the child under oath.**
- **Other Proceedings Determination**  
**Determine whether the child is involved in other court proceedings.**  
If the child or his or her family is involved in other court proceedings, determine whether a Notice of Related Cases form as required by Rule 2.545(d) and Rule 8.003 is or should be filed in the case. All related family cases must be handled before one judge unless impracticable. Rule 12.003(a). Consider how to consolidate or coordinate the related cases.

## **Advise of Rights**

- **Right to Counsel**  
Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. § 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that if indigent, he or she has the right to have counsel appointed by the court in accordance with § 27.52. § 985.033(4).

If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary. Section 985.033(1) entitles a child to representation by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel and the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. Rule 8.165(a). Waiver of counsel must be on the record and in writing. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the child appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1).

- **Right to Communicate**

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing to a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

## **Review Delinquency Petition**

- **Review for Prima Facie Case of Delinquency**

Review the delinquency petition to determine whether the petition states a prima facie case of delinquency. The requirements for the delinquency petition are set forth in Rule 8.035. The child does not need to file an answer to the petition. Any matters that could be in an answer may be pleaded orally before the judge. § 985.335.

- **Answer Filed**

If the child, joined by a parent or counsel, files an answer to the petition that admits to the allegations of the petition, verify that the answer acknowledges that the child was advised of his or her rights and of the possible dispositions available to the court. § 985.335. The answer must also provide a waiver for the adjudicatory hearing, a statement of consent to an order of adjudication, and an authorization for the court to proceed with a disposition hearing. § 985.335. File an order of adjudication and set the disposition hearing at the earliest practicable time that allows for the completion of the predisposition report. § 985.335.

## **Entrance of a Plea**

- **Generally**

The child must enter a plea of **guilty**, **not guilty**, or **nolo contendere** to the charges in the delinquency petition. If a child stands mute or answers evasively, a plea of not guilty shall be entered by the court. Rule 8.075(d). The child shall be permitted to withdraw a guilty plea at any time prior to the beginning of the disposition hearing with a showing of good cause, and the withdrawn plea is not considered an admission. Rule 8.075(e). Plea proceedings shall be of record. Rule 8.080(e). Until accepted by the court, the plea offer or negotiation may be withdrawn by either party. Rule 8.080(f). If the court does not concur in a tendered plea of guilty or nolo contendere arising from negotiations or a plea agreement, the plea may be withdrawn. Rule 8.080(g). Failure to follow procedural rules shall not render a plea void absent a showing of prejudice. Rule 8.080(h).

- **Plea of Not Guilty**

If the child enters a plea of not guilty, determine whether the adjudicatory hearing may take place immediately or if it must be set for a future date. The adjudicatory hearing must be scheduled as soon as practicable. The adjudicatory hearing must commence within 90 days of the earlier of the child being taken into custody or the date of service of summons issued when the petition was filed § 985.35; Rule 8.090. If the

child is detained, the adjudicatory hearing must commence within 21 days of the child being taken into custody. § 985.35(1)(a). If the child is a prolific juvenile offender, the adjudicatory hearing must commence within 45 days of the child being taken into custody. § 985.35(1)(b).

- **Plea of Guilty or Nolo Contendere**

If the child enters a plea of guilty or nolo contendere, determine whether the plea is knowing, intelligent, and voluntary. Rule 8.075(a); Rule 8.080(a). The court may refuse to accept a plea of guilty or nolo contendere and must not accept either plea without first determining that the plea is voluntary, and with the full understanding of the nature of the allegations and the possible consequences of the plea and that there is a factual basis for the plea. Rule 8.075(a); Rule 8.080(a). If it is anticipated that a guilty or nolo contendere plea is going to be entered, defense counsel can request a predisposition report be prepared prior to the arraignment hearing.

- **Determine Voluntariness of Guilty or Nolo Contendere Plea**

Before accepting a plea of guilty or nolo contendere, the court must determine that the plea is knowingly, intelligently, and voluntarily entered and that there is a factual basis for it. Rule 8.080(a). When making this determination, the court must place the child under oath and address the child personally. Rule 8.080(c). Determine that the child understands:

- The nature of the charges to which the plea is offered and the possible dispositions available to the court, Rule 8.080(c)(1);
- That if they are not represented by an attorney, the child has the right to be represented by an attorney at every stage of the proceedings, and, if necessary, one will be appointed. Counsel shall be appointed if the child qualifies for such appointment and does not waive counsel in writing, Rule 8.080(c)(2);
- That they have the right to plead not guilty, the right to an adjudicatory hearing where the child has the right to counsel, the right to compel the attendance of witnesses on their behalf, the right to cross-examine adverse witnesses, the right to testify, and the right not to testify, Rule 8.080(c)(3);
- That if they plead guilty or nolo contendere without express reservation of the right to appeal, they waive the right to appeal all matters related to the judgment, except the right to review by collateral attack is not impaired, Rule 8.080(c)(4);
- That a plea of guilty or nolo contendere waives the right to an adjudicatory hearing, Rule 8.080(c)(5);
- They plead guilty or nolo contendere, the court can ask them questions under oath, and the answers can be used for a subsequent prosecution for perjury, Rule 8.080(c)(6);



- The complete terms of the plea agreement including all obligations the child will incur as a result, Rule 8.080(c)(7);
  - They plead guilty or nolo contendere to certain sexual offenses, they may be required to register as a sexual offender, Rule 8.080(c)(8);
  - That if they plead guilty or nolo contendere to a sexually violent or sexually motivated offense, or have been previously adjudicated for such an offense, the plea may result in being placed in civil commitment as a sexually violent predator upon the completion of their sentence, Rule 8.080(c)(9); and
  - That if they plead guilty or nolo contendere and are not a United States citizen, the facts underlying the plea may subject them to deportation pursuant to the laws and regulations governing the United States Citizenship and Immigration Services, Rule 8.080(c)(10).
- **Acknowledgement by the Child**  
Before the court accepts a guilty or nolo contendere plea, the court must determine that the child either:
    - Acknowledges guilt, Rule 8.080(d)(1); or
    - Acknowledges that the plea is in the child's best interest, while maintaining innocence. Rule 8.080(d)(2)

## **Set Next Hearing**

- **If a Plea of Guilty or Nolo Contendere**  
If the child pleads guilty or nolo contendere, a disposition hearing can occur immediately after the plea is taken if a predisposition report has been prepared. Rule 8.070(b). The case can also be set for a disposition hearing for a later date. § 985.335. Prior to disposition, if the child is in detention, the need for continued detention must also be reviewed. § 985.26. A comprehensive evaluation for disposition is required if residential commitment is anticipated or recommended, § 985.185(1), including a predisposition report. § 985.43(1)(a).
- **If a Plea of Not Guilty**  
*If the child pleads not guilty, the case proceeds to an adjudicatory hearing and/or mediation.* The adjudicatory hearing can commence immediately if all parties are prepared to do so, but typically the court will set a future date for the adjudicatory hearing. Rule 8.110(b). If the child is represented by counsel, the child may file a written plea of not guilty at or before the arraignment hearing, and the arraignment proceeding will be deemed waived. Rule 8.070(b). The child does not need to be present at the arraignment if a written plea of not guilty has been entered.

- **Time Limits**

If there is to be an adjudicatory hearing and the child is not held in detention, it must occur within 90 days of the earlier of:

- The date the child was taken into custody; or
- The date the child was served with the summons that was issued when the petition was filed. Rule 8.090(a).

However, the child can file a Demand for Speedy Trial, which requires the adjudicatory hearing to be held within 60 days of the filing of the demand. Rule 8.090(g). If the child has not been brought to trial within 50 days of filing the demand, a hearing is required to either bring the case to trial within 10 days or to discharge the child from the allegations in the petition. Rule 8.090(m). See General Topics for more information on speedy trials.

If the child is held in detention, the adjudicatory hearing must be commenced within 21 days of the child being placed into detention, § 985.35(1)(a) and § 985.26(2)(a), unless the child has waived the time periods by requesting continuances. For certain serious offenses, an extension of up to 9 days may be allowed if cause is shown that more time is necessary to prepare for the adjudicatory hearing. § 985.26(2)(b).

Finally, If the child is a prolific juvenile offender pursuant to § 985.255(1)(f) and is in secure detention, he or she must be brought to hearing within 21 days. § 985.26(2)(c)1. A prolific juvenile offender on supervised release must be brought to hearing within 45 days of the child being taken into custody. § 985.35(1)(b).

## **Determine Detention Pending Disposition**

- **Review DRAI**

*If the child was held in detention prior to the arraignment hearing, the court will have to determine whether continued detention is necessary pending disposition. § § 985.24(1); 985.255(2). The court should review the DRAI score for assistance in determining appropriate detention, and will need to make findings that the child:*

- Presents a substantial risk of not appearing at the next hearing;
- Presents a substantial risk of bodily harm to others as evidenced by recent behavior;
- Presents a history of committing property offenses prior to adjudication, disposition, or placement;
- Has committed certain acts constituting contempt of court; or
- Requests protection from imminent bodily harm. § 985.24(1)(a)-(e).

- **Reasons not to Place the Child**

However, a child may not be placed into detention for any of the following reasons:

- To allow a parent or guardian to avoid his or her legal responsibility;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of more appropriate facilities. § 985.24(2)(a)-(d).

Also, a child may not, under any circumstances, be placed into secure detention if the child is alleged to be dependent under Chapter 39. § 985.24(3).

- **Length of Detention**

A child may not be held in detention for more than 15 days following the entry of an order of adjudication. § 985.26(3).

## ADJUDICATORY HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 985.27; 985.033; 985.035; 985.036; 985.039; 985.185; 985.26; 985.35; 985.437(2); 985.43; 985.455; 985.534</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin. 2.545(d); 2.560</p> <p>Rules of Juvenile Procedure 8.003; 8.030; 8.031; 8.060; 8.065; 8.090; 8.100; 8.110; 8.165</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	The purpose of the adjudicatory hearing is to determine whether the child committed a delinquent act or violation of law.
<b>TIME FRAME</b>	<p>The adjudicatory hearing must commence as soon as practicable and within <b>90 days</b> of the earlier of the child being taken into custody or the date of service of summons issued when the petition was filed § 985.35; Rule 8.090.</p> <p>If the child is detained, the adjudicatory hearing must commence within <b>21 days</b> of the child being taken into custody. § 985.26(2)(a) and § 985.35(1)(a).</p> <p>A prolific juvenile offender in a supervised release must be brought to a hearing within <b>45 days</b> of being taken into custody. § 985.35(1)(b).</p> <p>If a speedy trial is demanded, the adjudicatory hearing must be held within <b>60 days</b> of the filing of the demand. Rule 8.090(g). If the child has not been brought to trial within 50 days of filing the demand, a hearing is required to either bring the case to trial within 10 days or to discharge the child from the allegations in the petition. Rule 8.090(m).</p>
<b>BURDEN OF PROOF</b>	The petitioner must prove the allegations in the delinquency petition that the child committed a delinquent act or violation of law beyond a reasonable doubt. § 985.35(2)(a).
<b>RULES OF EVIDENCE</b>	Rules of evidence used in criminal cases. § 985.35(2).
<b>RIGHT TO COUNSEL</b>	The court must advise the child of his or her right to counsel and determine whether the right is understood. § 985.033; Rule 8.165. The court must also determine

	whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with § 27.52. If counsel is waived after a meaningful opportunity to confer with counsel, the court must determine whether the waiver is knowing, intelligent, and voluntary. § 985.033; Rule 8.165.
<b>NEXT HEARING</b>	A disposition hearing must occur as soon as possible after the adjudicatory hearing. A child cannot remain in detention for longer than 15 days following entry of an order of adjudication. § 985.26(3).

## **ADJUDICATORY HEARING BENCHCARD**

### **Generally**

- Determine whether an interpreter is needed to facilitate communications at the hearing.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the adjudicatory hearing is to allow the petitioner an opportunity to prove the allegations in the delinquency petition beyond a reasonable doubt.
- Place the child and all witnesses, including the parents, under oath.
- Have all the parties identify themselves for the record with full name and current address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the hearing.
- Determine whether the victim and/or the victim's parents, guardian, lawful representative, or next of kin has been informed of the date and time of the hearing.
- Determine whether the child, or his or her family, is involved in other court proceedings and if a Notice of Related Cases form as required by Rule 2.545(d) and Rule 8.003 is, or should be, filed in the case. Consider how to consolidate or coordinate any related cases.

### **Advise of Rights**

- Determine whether the child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel and determine whether the right is understood.
- If the child and his or her parents are indigent, advise the child that he or she has the right to have counsel appointed.
- The court shall appoint counsel unless waived by the child in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent and that anything the child says can be used against him or her.

## **Adjudicatory Hearing Process**

- The child may testify on his or her own behalf and introduce evidence. Verify that the child understands what this means.
- The rules of evidence and procedures applied in criminal cases are applied in delinquency cases. Explain to the child that the petitioner must prove the charge of delinquency beyond a reasonable doubt - that the charge must be proven to the extent that there is no "reasonable doubt" in the mind of a reasonable person that the child is guilty.

## **Delinquency Determination**

- If delinquency is not proven, dismiss the case and discharge the child.
- If delinquency is proven, determine whether to withhold adjudication or adjudicate the child delinquent.
- State the factual basis for the determination. Tell the child the reasons for the determination in clear, simple terms.
- After delinquency is proven, the case proceeds to disposition. Explain what will happen next and what is expected of the child.

## **Custody Pending Disposition**

- Explain to the child any custody decisions made and the reasons for them.

## **Advise of Right to Appeal**

- Verify that the child understands the right to appeal.

## **Set Disposition Hearing**

- If a predisposition report has not been prepared, order one to be completed and set the disposition for a date after the report will be available.
- If a predisposition report has been completed and DJJ has issued its recommendation, the court may hold the disposition hearing immediately or may set it for a future date.
- A disposition hearing must occur as soon as possible after the adjudicatory hearing. If the child is in detention care, the disposition hearing must be held no later than 15 days following entry of an order of adjudication.

## **Requirements for a Written Order of Adjudication**

- The order of adjudication of delinquency must be in writing.
- State the name and age of the child.

- State whether or not the child is found to have committed a delinquent act or violation of law as to each charge in the petition and detail the factual basis for each finding.
- If the child was found not to have committed a delinquent act, make a finding, stating facts the finding is based on, and order the release of the child.
- If the child was found to have committed a delinquent act, make a finding and order the child adjudicated delinquent or withhold adjudication, and briefly state the facts upon which the finding is made.
- Direct the detention of the child and state the reasons or, if appropriate, order the release of the child and return to his or her nonresidential commitment program, or release the child pending disposition.
- Make a finding regarding the cost of supervision and care.
- Set the next hearing date.



## ADJUDICATORY HEARING OUTLINE

### Generally

- **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of a need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6); Rule 2.560. If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. § 90.6063(3)(b); Rule 14.100. If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(3). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

- **Recording**

A record of all hearings must be made by an official court reporter, a court-approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

Explain that the purpose of the adjudicatory hearing is to provide the petitioner an opportunity to prove the allegations of the delinquency petition beyond a reasonable doubt. § 985.35(2)(a). Delinquency adjudicatory hearings are conducted by the court without a jury. Rule 8.110(c). The rules of evidence used in criminal cases apply to adjudicatory hearings. § 985.35(2). The child has the right to present evidence and to cross-examine witnesses. § 985.35(2)(b). The adjudicatory hearing must be held as soon as practicable after the petition for delinquency is filed, but not more than 21 days after the child is placed in detention care. § 985.26(2). For a child not held in detention, the adjudicatory hearing must be held within 90 days of the earlier of the date the child was taken into custody or the date the child was served the summons that was issued when the petition was filed. Rule 8.090(a). If the child has filed a Demand for Speedy Trial, the adjudicatory hearing to be held within 60 days of the filing of the demand. Rule 8.090(g). If the child has not been brought to trial within 50 days of filing the demand, a hearing is required to either bring the case to trial within 10 days or to discharge the child from the allegations

in the petition. Rule 8.090(m). *See* General Topics for more information on speedy trials.

- **Identify Those Present**

Identify those present and their relationship to the case. Those present should identify themselves for the court and the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. § 985.035.

- **Notice Assessment**

If there are any identified parents or guardians who are absent from the proceeding, determine what steps were taken to locate and serve them with notice of the adjudicatory hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search, following a detailed and thorough list of sources he or she must check before he or she can report the failure to notice. *See* General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of an adjudicatory hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. § 985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing if a party can show good cause for the continuance. Rule 8.100(e).

Victims and their family members or lawful representatives have a right to be informed of, to be present during, and to be heard when relevant at all crucial stages of proceedings involving the accused juvenile. § 985.036.

- **Place the child and any witnesses, including the parents, under oath**

If the child is presenting testimony on his/her own behalf, the court should place the child under oath. Rule 8.110(d). The court should also place any witnesses who will present testimony under oath. Prior to the examination of any witnesses, the court or any party may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule 8.100(d).

- **Joint Trials**

Where two or more children are alleged to have jointly committed a delinquent act or violation of the law, they shall be tried jointly unless

the court in its discretion orders separate trials. Rule 8.110(e).

- **Other Proceedings Determination**

Determine whether the child is involved in other court proceedings and if a Notice of Related Cases form as required by Rule 2.545(d) and Rule 8.003 is, or should be, filed in the case. Consider how to consolidate or coordinate the related cases.

## **Advise of Rights**

A child in delinquency proceedings is generally afforded the same Constitutional rights as adults in criminal proceedings. Children are entitled to due process, the right to counsel, and the right against self-incrimination and illegal search and seizure. The one notable exception is the right to a jury – a child in a delinquency proceeding does not have the right to a trial by jury. § 985.35(2).

- **Right to be Represented by Counsel**

Determine whether the child is represented by counsel. If the child appears without counsel, advise him or her of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that if indigent, he or she has the right to have counsel appointed by the court in accordance with §§ 27.52 and 985.033(4).

If counsel is waived, determine if the waiver is made knowingly, intelligently, and voluntarily. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court

proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record and in writing. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1).

- **Right to Communicate**

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian during the adjudicatory hearing. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

- **Right to Remain Silent**

Advise the child of his or her right to remain silent. The child must be apprised that he or she has the right against self-incrimination. The court must advise the child that he or she has the right to remain silent and that anything the child says can be used against him or her as an admission. § 985.35(2).

## **Adjudicatory hearing process**

Conduct the hearing, to the fullest extent practicable, in language understandable to the child before the court. § 985.35(2).

- **Defense of Alibi**

The state attorney may demand in writing that a child who intends to offer an alibi defense must provide the state attorney with the details of the alibi not less than 10 days before the trial date. Rule 8.065(a). The state attorney may then prepare a list of rebuttal witnesses within 5 days of receipt of the information and must present that list to the child. Rule 8.065(b). Should the child fail to or refuse to comply with Rule 8.065, the court may, in its discretion, exclude testimony of alibi witnesses other than that of the child. Rule 8.065(c). Should the state attorney fail to comply with Rule 8.065, the court may, in its discretion, exclude rebuttal testimony offered by the state. Rule 8.065(c). The court may waive the requirements of these rules for good cause shown. Rule 8.065(d).

- **Participation in the Discovery Process**

Participation by the child in the discovery process shall be an election to participate in discovery. Rule 8.060(a)(1). If there is a showing of materiality to the preparation of the defense, the court can order discovery other than in the written discovery exhibit. Rule 8.060(a)(5). Upon application, the court may deny or partially restrict disclosure authorized by Rule 8.060 if it finds there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure, which outweighs any usefulness of the disclosure to the party requesting it. Rule 8.060(c)(1). See General Topics for more information on the discovery process.

- **Rules of Evidence**

The rules of evidence applied in criminal cases are applied in delinquency cases. § 985.35(2). A child charged with a delinquent act or violation of the law is afforded all rights against self-incrimination. § 985.35(2)(c). Evidence illegally seized or obtained shall not be admitted into evidence to establish the allegations against the child. § 985.35(2)(c). See General Topics for more information on common evidence issues.

- **Child Allowed to Testify and Introduce Evidence**

The child may testify on his or her own behalf and introduce evidence. § 985.35(2)(b). The child may be cross-examined like other witnesses, Rule 8.110(d), and may cross-examine witnesses. § 985.35(2)(b). No child can be compelled to give testimony against him- or herself, and no prosecuting attorney can comment on any such failure to testify. Rule 8.110(d).

- **Right to a Closing Argument**

All children have the right to a closing argument. However, the order in which the child and the state present their closing arguments may vary, depending on whether the child has presented any evidence or offered any testimony other than his or her own. If the child has presented evidence or testimony other than his or her own, the state presents the first closing argument (and the rebuttal closing argument), and the child presents the second closing argument.

If, however, the child has presented no testimony or evidence other than his or her own, the child is entitled to present the initial closing argument and a rebuttal argument. Rule 8.110(d). The state is allowed to present the second closing argument.

In *D.B. v. State*, 979 So. 2d 1119 (Fla. 3d DCA 2008), the court held that D.B., who presented no evidence nor offered any testimony other than his own, was entitled to present the first and final closing arguments; this is held to be different than adult criminal prosecutions, where the State is entitled to give the first and reply closing arguments, per Fla. R. Crim. P. 3.381. The court further held that this right is a vested procedural right.

## **Delinquency Determination**

- **If Delinquency is not Proven**

If the allegations in the petition have not been proven beyond a reasonable doubt, dismiss the case and discharge the child. § 985.35(3); Rule 8.110(f).

- **If Delinquency is Proven**

If the allegations in the petition have been proven beyond a reasonable doubt, the court must enter an order finding the child delinquent and state the facts upon which the finding is made. The content of the order and the process to be followed will depend upon whether the court elects to withhold adjudication pursuant to § 985.35(4) or to adjudicate the child delinquent pursuant to § 985.35(5).

- **Withholding Adjudication**

The court may, in its discretion, enter an order stating the facts upon which its finding is based but withhold adjudication. § 985.35(4). Upon withholding adjudication, the court may place the child in a probation program under the supervision of DJJ and impose a variety of conditions on the child. § 985.35(4)(a). If the child fails to comply, the court may, after a hearing on noncompliance, enter an adjudication of delinquency. § 985.35(4)(c).

Withholding adjudication may be beneficial because a withholding will increase judicial efficiency and may allow the court an opportunity to demonstrate leniency for uncharacteristic behavior. Additionally, it could preclude the child from the collateral consequences of an adjudication. (See Burgoon, Brian. *Withhold of Adjudication: What Everyone Needs to Know*. Florida Bar Journal (Jan-Feb 2021).)

- **Order of Adjudication**

If the court finds the child has committed a delinquent act or violation of the law, and does not elect to withhold adjudication, the court shall incorporate that finding into an order of adjudication of delinquency, stating the facts upon which the finding is made. § 985.35(5). If the child is adjudicated delinquent, the court must then decide disposition. If the pre-disposition report is available, the court may immediately proceed to disposition or continue the case to a disposition hearing. Rule 8.110(g). If a predisposition report is not ready, the court will continue the case and refer the child to the appropriate agency or agencies for a study and recommendation. Rule 8.110(g). An adjudication of delinquency shall not be deemed to be a conviction, nor will the child be deemed to be a criminal by reason of that adjudication. § 985.35(6).

- **Written Finding if Child is in a Public School**

Regardless of whether adjudication is withheld, if the child is attending public school and the victim or victim's sibling also attends that school, the court must make a written finding under § 985.455(2). The court must determine whether a no contact order in favor of the victim or victim's sibling is appropriate. If the court finds that it is appropriate, and if the victim or victim's representative finds it appropriate, the court may reflect such determinations in writing or in open court and include a statement that the victim or victim's representative did not object to the offender child being permitted to attend the same school or riding the same bus as the victim or victim's siblings. § 985.455(2).

- **Degrees of Offenses Included**

If the petition alleges more than one offense, the court shall state in its order which offense or offenses it finds the child committed. Rule 8.110(i). If the petition alleges an offense or offenses that are divided into degrees, the court may find that the child committed an offense of the degree alleged or of any lesser degree. Rule 8.110(h). The court may find that the child committed an attempt to commit the offense if the attempt is an offense and is supported by the evidence, or may find any necessarily included or lesser included offense of the offense charged in the petition and supported by the evidence. Rule 8.110(j).

- **Motion for Judgment of Dismissal. Rule 8.110(k).**

At the close of the petitioner's evidence, the court may dismiss the petition on its own or on motion by the state attorney or the child if the court finds the evidence insufficient to establish a prima facie case of delinquency. When making such a determination, the court must view the evidence in the light most favorable to the State.

### **Custody Pending Disposition**

If the case is continued pending a disposition hearing, the court may order the child detained. Rule 8.110(g). However, the court must place in detention care all children who are adjudicated delinquent and awaiting placement in a commitment program. § 985.27.

### **Advise of Right to Appeal**

An appeal from an adjudicatory order may be taken to the appropriate district court within the time and manner prescribed in § 924.051 and Fla. Rules of Appellate Procedure by the child, parent or guardian, or the state. § 985.534(1).

In *L.B. v. State*, 10 So. 3d 1161 (Fla. 3d DCA 2009), the court held, "To preserve an issue for appeal, a litigant must make a timely, contemporaneous objection, stating a legal ground for that objection. The purpose of the rule is to 'place the trial judge on notice that error may have been committed, and provide him an opportunity to correct it at an early stage of the proceedings.' (citing *Harrell v. State*, 894 So. 2d 935 (Fla. 2005) at 340)." (Emphasis added.)

### **Set Disposition Hearing**

- **Generally**

A predisposition report must be ordered by the court for any child for whom a residential commitment disposition is anticipated or recommended by an officer of the court or DJJ. Evaluation shall be ordered for any child for whom residential commitment disposition is anticipated or recommended. § 985.185(1). The court may order any additional reports that may be necessary. § 985.185(2). A child who was not in secure detention at the time of the adjudicatory hearing, but for whom residential commitment is anticipated or recommended, may be placed under a special detention order for a period not to exceed 72 hours under § 985.26(5) for the purpose of conducting a comprehensive evaluation. § 985.43(1). This special detention order may be extended of an additional 73 hours upon further order of the court.

- **If Report is Unavailable**



If the predisposition report is unavailable at the time of the adjudicatory hearing, the court will continue the case for a disposition hearing until such a time as the report is available. Rule 8.110(g). The court should refer the child to the appropriate agency for a study and recommendation. Rule 8.110(g). A child may not be held in detention care for more than 15 days following the entry of an order of adjudication. § 985.26(3).

## **Requirements for a Written Order of Adjudication**

**The court order must be in writing and shall contain findings of fact as required by law. Rule 8.055.**

- **Name and age.** State the name and age of the child.
- **Waiver of Counsel.** If counsel was waived, make finding that the waiver was knowing, voluntary, and intelligent.
- **Detention directions.** Direct the detention of the child pending disposition and state the reasons therefore or, if appropriate, order the release of the child and return to his or her nonresidential commitment program.
- **Finding of Adjudication.** If the child was found not to have committed a delinquent act, make a finding stating the facts on which the finding is based and order the release of the child. If the child was found to have committed a delinquent act, make a finding and order the child adjudicated delinquent, or withhold adjudication and briefly state the facts upon which the finding is made. § 985.35(5).
- **Specify offenses.** If the petition alleges more than one offense or an offense divided into degrees, specify which offense or offenses the child was found to have committed. Rule 8.110(i).
- **Release instructions.** Except as provided in §§790.22(8) or 985.27, when a child is placed into secure or supervised release care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5:00 p.m. on the last day of the period specified in § § 985.26 or 985.27, whichever is applicable, unless the requirements of the applicable provision have been met or an order of continuance has been granted under § 985.26(4).
- **Finding of cost.** The court must make a finding regarding cost or supervision and care, or make a finding as to any reduction or waiver of cost, including therein the reasons for such a finding. § 985.039. When a child is placed into supervised release detention, probation, or other supervised status with DJJ, or when a child is committed to a minimum-risk non-residential restrictiveness level, order the parent or guardian to pay one dollar (\$1.00) per day to DJJ for each day the child is in that status. § 985.039(1)(a).

If a child is placed in secure detention or placed on committed status and DJJ acquires temporary legal custody of the child, order the parent or guardian to pay five dollars (\$5.00) per day to DJJ for each day the child is in that status. § 985.039(1)(b).

If the court fails to include in the order information regarding cost of supervision and care, the parent is deemed to have an obligation to pay DJJ one dollar (\$1.00) per day for each day the child is under the supervision of DJJ and five dollars (\$5.00) per day for each day the child remains in the care of DJJ. § 985.039(5). *See General Topics for more information on costs.*

- **Set next hearing if applicable.**

## DISPOSITION HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 90.6063; 318.143; 790.22; 938.03; 985.0301; 985.033; 985.035; 985.036; 985.039; 985.255; 985.26; 985.27; 985.35; 985.43; 985.433; 985.435; 985.437; 985.441; 985.455; 985.46; 985.601; 985.721</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin. 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.055; 8.100; 8.110; 8.115; 8.165; 8.947</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	The purpose of the disposition hearing is for the court to consider reports, recommendations, and other evidence to determine the disposition of the case.
<b>TIME FRAME</b>	The disposition of the case shall be held once the child has been found to have committed a delinquent act.
<b>RULES OF EVIDENCE</b>	Court may receive any relevant and material evidence helpful in determining the proper disposition. The court may rely upon such evidence to the extent of its probative value, even if it is not competent in an adjudicatory hearing. Rule 8.115(a).
<b>RIGHT TO COUNSEL</b>	The court must advise the child of his or her right to counsel and determine whether the right is understood. § 985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with § 27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. § 985.033(1); Rule 8.165.

## **DISPOSITION HEARING BENCHCARD**

### **Generally**

- Determine whether an interpreter is needed to facilitate communications at the hearing.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the disposition hearing is for the court to consider reports, recommendations, and other relevant and material evidence to determine the disposition of the case.
- Have all the parties identify themselves for the record with their full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child, or his or her family, is involved in other court proceedings and if a Notice of Related Cases form as required by Rule 2.545(d) and Rule 8.003 is, or should be, filed in the case. Consider how to consolidate or coordinate any related cases.

### **Advise of Rights**

- Determine whether the child is represented by counsel.
- If the child appears without counsel, advise the child of their right to counsel, and determine whether the right is understood.
- If the child and his or her parents are indigent, advise the child that he or she has the right to have counsel appointed. The court shall appoint counsel unless waived by the child in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent, and that anything the child says can be used against him or her.

### **Review Predisposition Report**

- The court must consider the predisposition report.
- In addition to the predisposition report, the court must consider the

underlying comprehensive assessment and records of earlier judicial proceedings.

- The court may also withhold adjudication, place the child in a probation program, and impose penalty components such as restitution, community service, or other nonresidential punishment appropriate to the offense.

### **Adjudication and Commitment Determination**

- The first determination the court must make its determination of suitability for adjudication and commitment of the child to the department.
- The court may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency.
- If adjudication is withheld, the court may still place the child on probation under the supervision of the Department (or other appropriate entity) and impose offense-appropriate penalties and rehabilitative components.
- If the court adjudicates the child delinquent, the court must then decide whether commitment or probation is most appropriate.
- If the court commits the child to the department, DJJ will recommend to the court a placement level and individualized treatment plan for the child.
- The court must include a penalty component in a probation program for a child adjudicated delinquent.
- The court may order a child adjudicated delinquent to make restitution, or the court may order the parent or guardian to make restitution.
- The court may also order the child be placed on post-commitment probation.
- The court may order conditional release services to promote rehabilitation.
- The court must order other penalties if the child is adjudicated for offenses involving firearms and offenses involving alcohol consumption.
- Verify that the child understands what is being ordered, how it will affect the child, and what will be expected of him or her. Explain the terms of disposition clearly and in language the child can understand.

### **Detention Pending Commitment**

Children committed to a residential program must be placed into some form of detention care pending placement into the residential program. Requirements for a written order of disposition:

- State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- State the disposition of each count specifying the charge, the degree of offense, and the maximum penalty defined by statute.
- If counsel is waived, make findings that the waiver was knowing, voluntary, and intelligent.

- State general and specific conditions or sanctions, including any restitution or probation provisions.
- Make findings as to the disposition of the child.
- State the date and time when issued, and the country and court where issued.
- The child's fingerprints shall be affixed to the order of disposition.
- State the period of the disposition.
- State whether the court retains jurisdiction over discharge

## DISPOSITION HEARING OUTLINE

### Generally

- **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of the need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6); Rule 2.560. If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. § 90.6063(3)(b); Rule 14.100. If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(3). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

- **Recording**

A record of all hearings must be made by an official court reporter, a court approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

Explain to the child that the purpose of the disposition hearing is for the court to consider reports, recommendations, and other relevant and material evidence to determine the disposition of the case. All parties present have the right to be heard. For purposes of disposition, this includes parents, guardians, legal custodians, child's counsel, state attorney, DJJ representatives, the victim or victim's representative, representatives of the school system, and law enforcement officers involved in the case. *I.H. v. State*, 584 So. 2d 230 (Fla. 5th DCA 1991). The disposition hearing is akin to the sentencing hearing in criminal law and follows either a court finding that the juvenile committed a delinquent act or a plea of guilty or nolo contendere was entered. The court has a wide range of disposition options ranging from a judicial warning, probation only, commitment to a licensed child caring-agency, or commitment to DJJ.

- **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open

to the public unless the court finds that it is in the child's best interest to restrict those in attendance. § 985.035.

- **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine what steps were taken to locate and provide notice of the detention hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of the disposition hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. § 985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030(b) and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing, if a party can show good cause for the continuance. Rule 8.100(e).

Victims and their family members or lawful representatives have a right to be informed of, to be present during, and to be heard when relevant at, all crucial stages of proceedings involving the accused juvenile. § 985.036.

- **Other Proceedings Determination**

**Determine whether the child is involved in other court proceedings.**

Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

## **Advise of Rights**

- **Right to be Represented by Counsel**

Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age,



education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigency status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, he or she has the right to have counsel appointed by the court in accordance with §§ 27.52 and 985.033(4).

If counsel is waived, determine if the waiver is made knowingly, intelligently, and voluntarily. Section 985.033(1) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the child appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1).

- **Right to Communicate**

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian during the disposition hearing. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;

- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

## **Review Predisposition Report**

- **Consider Predisposition Report**

The court must consider the predisposition report. The predisposition is prepared by the juvenile probation officer and contains DJJ's recommendations for disposition and, if prepared, must be submitted to the court no less than 48 hours prior to the disposition hearing.

§ 985.43(3). A predisposition report is required when residential commitment is anticipated. § 985.43(1)(a). The child, the child's attorney, the child's parent or custodian, and the state attorney are entitled to disclosure of all information contained in the predisposition report and all reports and evaluations used in the preparation. Rule 8.115(c). However, the predisposition report cannot be reviewed by the court without the consent of the child until the child has been found to have committed a delinquent act. § 985.43(3). The predisposition report may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Rule 8.115(a).

- **Consider Other Records**

The court must consider the child's entire assessment, the predisposition report, the educational needs assessment, and records of earlier judicial proceedings pursuant to § 985.43(2). The court may also order additional evaluations as necessary and consider any relevant and material evidence that may be helpful to determine the proper disposition. Evidence may be relied upon to the extent of its probative value even if this evidence would not be competent at an adjudicatory hearing. Rule 8.115(a).

- **Before Determining Disposition**

Before determining disposition, **the court must:**

- State clearly, using common terminology, the purposes of the hearing and the right of those present to comment at appropriate times;
- Discuss with the child his or her compliance with any plan imposed since the date of the offense;
- Discuss with the child his or her feelings about the offense committed, the harm done, and what penalty he or she should face for the offense; and

- Give all parties, as well as the victim or representative, an opportunity to comment on the issue of disposition and any proposed rehabilitative actions. § 985.433(4)(a)-(d).
- **Determine Disposition**  
Once the court has considered the predisposition report and all the evidence, determine disposition. § 985.433. The court must determine what program best meets the needs of the child and the public safety. § 985.433(9). The court has the option to adjudicate the child delinquent and commitment of the child to the Department; or Under § 985.35(4)(a), the court may withhold adjudication and place the child in a probation program and may impose other penalty components as a condition of the program.

## **Commitment Determination**

- **Suitability of Adjudication Determination**  
The first determination the court must make is a determination of suitability for adjudication and commitment of the child to the department. § 985.433(6). The determination shall include a consideration of the information presented by all parties, including but not limited to the predisposition report, the nature and circumstances of the delinquent act, and the child's educational status. The court has substantial discretion whether to place the child on probation or, in the alternative, to order the child committed to the department. *J.B.S. v. State*, 90 So. 3d 961 (Fla.1<sup>st</sup> DCA 2012).
- **Determine Commitment**  
The court uses the predisposition report, along with other materials and evidence, in the disposition hearings. The court may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:
  - Commit the child to a licensed child-caring agency willing to receive the child; however, the court may not commit the child to a jail or to a facility used primarily as a detention center or facility or shelter.
  - Commit the child to the department at a restrictiveness level defined in s. 985.03. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program.
  - Commit the child to the department for placement in a program or facility for juvenile sexual offenders in accordance with s. 985.48,

subject to specific appropriation for such a program or facility.  
§ 985.441(1).

DJJ has four restrictiveness levels depending on the program needs and required supervision of the child, as defined in § 985.03(44)(a)-(d): (a) minimum-risk nonresidential, (b) nonsecure residential, (c) high-risk residential, and (d) maximum-risk residential.

When a child commits a misdemeanor, or if a child is currently on probation for a misdemeanor, the court may not commit the child for any misdemeanor offense or any probation violation that is technical in nature and not a new violation of law at a restrictiveness level other than minimum-risk nonresidential. However, the court may commit such child to a nonsecure residential placement if:

- The child has previously been adjudicated or had adjudication withheld for a felony offense;
- The child has previously been adjudicated or had adjudication withheld for three or more misdemeanor offenses within the previous 18 months;
- The child is before the court for disposition for a violation of § 800.03, § 806.031, or § 828.12; or
- The court finds by a preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement. Such finding must be in writing.

§ 985.441(2)(a-b).

DJJ will recommend to the court a placement level and individualized treatment plan for the child, which the court must consider before deciding the commitment of the child. § 985.433(6). The court may commit the child to the level recommended by DJJ, or it can reject the recommendation. § 985.433(7)(b). The court can deviate from the recommendation; if it does so, it must follow § 985.433(7)(b) and the Florida Supreme Court's ruling in *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009). The court may not direct DJJ to place a child at a specific facility. *Dept. of Juvenile Justice v. K.B.*, 784 So. 2d 556 (Fla. 1st DCA 2001). The court can only order the commitment level.

In *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009), the court held that, if lower courts wanted to diverge from the recommendations of DJJ, the juvenile court must:

“articulate an understanding of the respective characteristics of the opposing restrictiveness levels, including, but not limited to, the type of child that each restrictiveness level is designed to serve, the potential

“lengths of stay” associated with each level, and the divergent treatment programs and services available to the juvenile at these levels; and

logically and persuasively explain why, in light of these differing characteristics, one level is better suited to serving both the rehabilitative needs of the juvenile, in the least restrictive setting, and maintaining the ability of the State to protect the public from further acts of delinquency.”

- **Minimum-risk nonresidential.** Programs or program models work with the child who remains in the community and participates at least 5 days per week in a day treatment program. A child assessed and classified for a minimum-risk nonresidential program represents a minimum risk to himself/herself and to public safety and does not require placement and services in residential settings. A child in this level has full access to and resides in the community. However, a child who was found to have committed delinquent acts that involved firearms, that were sexual offenses, or that would have been life felonies or first-degree felonies if committed by an adult may not be committed to a program at this level.
- **Nonsecure residential.** Programs at this commitment level are residential but may allow the child to have unsupervised access to the community. Facilities are either environmentally secure, staff secure, or hardware-secure with walls, fencing, or locking doors. Facilities at this commitment level shall provide 24-hour awake supervision, custody, care, and treatment of residents. A child assessed and classified for placement in programs at this commitment level represents a low or moderate risk to public safety and requires close supervision. The staff at the facility at this commitment level may seclude a child who is a physical threat to him or herself or others. Mechanical restraint may also be used when necessary.
- **High-risk residential.** At this commitment level, programs are residential and do not allow the child to have access to the community, except at that temporary release providing community access for up to 72 continuous hours may be approved by a court for a child who has made successful progress in his or her program in order for him or her to attend a family emergency or, during the final 60 days of his or her placement, to visit his or her home, enroll in school or a vocational program, complete a job interview, or participate in a community service project. High-risk residential facilities are hardware-secure with perimeter fencing and locking doors. Facilities provide 24-hour awake supervision, custody, care, and treatment of residents. A child assessed and classified for high-risk residential placement requires close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs

placement in programs at lower commitment levels. The staff at a facility at this commitment level may seclude a child who is a physical threat to him or herself or to others. Mechanical restraint may also be used when necessary. The facility may provide for single-cell occupancy.

- **Maximum-risk residential.** Programs at this commitment level include juvenile correction facilities and juvenile prisons. The programs are long-term residential and do not allow the child to have access to the community. Facilities are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Facilities provide 24-hour awake supervision, custody, care, and treatment of residents. The staff at a facility at this commitment level may seclude a child who is a physical threat to him or herself or to others. Mechanical restraint may also be used when necessary. The facility must provide for single-cell occupancy, except that children may be housed together during prerelease transition. A child assessed and classified for this level of placement requires close supervision in a maximum-security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.

- **Period of Commitment**

The period of commitment is indeterminate but cannot exceed the maximum adult sentence for the same offense. § 985.455(3). This allows DJJ to retain the child in an appropriate commitment placement until rehabilitation is achieved. However, for some offenders, such as a sex offender or juvenile prison commitment, jurisdiction is until 21 years of age. § 985.0301(5).

DJJ commitments have varying levels of restrictiveness. Restrictiveness level means the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children.

The duration cannot exceed the time that could be imposed for which an adult sentence could be imposed, except that for misdemeanors of the second degree, probation may be imposed for up to 6 months. § 985.455(3).

The court may also order the child to be placed on post-commitment probation following the discharge from commitment. § 985.433(7)(c). Also, the court may suspend imposition of the second degree, and probation may be imposed for up to 6 months. § 985.455(4).

- **Probation**

The court may include a probation program for a child adjudicated delinquent. § 985.435, however, more often, adjudication is withheld when the child is placed on probation. Juvenile probation is an individualized program that includes both a penalty and a rehabilitative component. § 985.435(2)-(3). The probation must include treatment designed to achieve rehabilitation, such as substance abuse treatment, required school attendance, educational or work programs, counseling, and community-based programs for youths. § 985.435(3). A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new violations of law. § 985.435(4). A mandatory \$50.00 victim's crime compensation trust fund fee must be imposed regardless of whether adjudication is withheld. § 938.03(1). The court may impose any special condition of probation as long as it bears a relationship to the crime, relates to conduct, which is in itself criminal, or requires or forbids conduct which is reasonably related to future criminality. *J.R.M. v. State*, 228 So. 3d 1147 (Fla. 4th DCA 2017). The court may impose electronic monitoring as a condition of juvenile probation. *T.S. v. State*, 682 So. 2d 1202 (Fla. 4th DCA 1996). An order of probation is indeterminate but cannot extend beyond the child's 19th birthday. § 985.0301(5)(b).

The court may conduct judicial review hearings for a child placed on probation to foster accountability and determine that the child is complying with the probation requirements. § 985.435(6). The court may also allow for early termination of the probation for a child who has substantially complied with the terms of the probation. § 985.435(6).

- **Restitution**

The court may order a child adjudicated delinquent (or where adjudication has been withheld) to make restitution or order the parent or guardian to make restitution. § 985.437. The court may order the child to make restitution in money through a promissory note cosigned by the parents or in kind for damages or loss caused by the offense. § 985.437(2).

- **Conditional Release Services**

The court may order conditional release services to promote rehabilitation. § 985.46. These services can contribute to a successful transition of a delinquent child from commitment back into the child's community and, thus, should be included in the continuum of care. § 985.46(1).

- **Offenses Involving Firearms**

If the child is adjudicated for an offense involving the use or possession of a firearm and is not committed to DJJ, the court must order, in addition to any other penalty, at least 15 days in secure detention, 100 hours of community service, and placement on probation or in a nonresidential community program for a first offense. § 790.22(9). The court must order at least 21 days of secure detention and 100-200 hours of community service and may be placed on community control or in a nonresidential commitment program. For a second offense, the minor shall serve a mandatory period of detention of at least 21 days in a secure detention facility; and perform not less than 100 nor more than 250 hours of community service; and may be placed on community control or in a nonresidential commitment program. § 790.22(9). In addition, the child's driver's license must be revoked or withheld for up to one year for a first offense and up to 2 years for a second or subsequent offense. § 790.22(10). The child does not get credit for time already served in secure detention. § 790.22(9)(b).

- **Offenses Involving Alcohol**

Children who violate the alcohol statute prohibiting persons less than 21 years of age from drinking alcohol are required to have their driver's license revoked or withheld until they turn 18 years of age for the first offense and until they turn 21 years of age for a second or subsequent offense. § 318.143(4).

## **Detention Pending Commitment**

Children committed to a residential program must be placed into some form of detention care pending placement into the residential program, § 985.27.

## **Requirements for a Written Order of Disposition**

- **The court order must be in writing and must set forth the facts upon which the finding that the child committed a delinquent act is based. Rule 8.055. The Florida Supreme Court has an approved form available for use, Form 8.947.**
  - **Name and address.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty. Rule 8.115(d)(1).
  - **Date and time.** Specify the date and time when issued and the county and court where issued. Rule 8.115(d)(5).
  - **Waiver of Counsel.** If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
  - **Detention directions.** Direct the detention of the child and state the reasons supporting such or, if appropriate, order the release of the child and return to his or her nonresidential commitment



- program.
- **Findings of fact.** Make all findings of fact required by law. Rule 8.115(d)(4).
  - **Specify offenses.** If the petition alleges more than one offense or an offense divided into degrees, the court must specify of which offense or offenses the child has been adjudicated delinquent. Rule 8.110(i).
  - **Disposition.** State the disposition of each count, specifying the charge title, degree of offense, and maximum penalty defined by statute and specifying the amount of time served in secure detention before disposition; and state general and specific conditions or sanctions. Rule 8.115(d)(2)-(d)(3).
  - **Determination of gang membership.** Include any determination that the child was a member of a street gang. § 985.433(7). Such a determination must be given “great weight” in identifying the appropriate level of restrictiveness. § 985.433(7)(a).
  - **Finding of cost.** The court must make a finding regarding cost or supervision and care, or make a finding as to any reduction or waiver of cost, including therein the reasons for such a finding. § 985.039. When a child is placed into supervised release detention, probation, or another supervised status with DJJ, or when a child is committed to a minimum-risk non-residential restrictiveness level, order the parent or guardian to pay one dollar (\$1.00) per day to DJJ for each day the child is in that status. § 985.039(1)(a).
    - If a child is placed in secure detention or placed on committed status and DJJ acquires temporary legal custody of said child, order the parent or guardian to pay five dollars (\$5.00) per day to DJJ for each day the child is in that status. § 985.039(1)(b).
    - If the court fails to include in the Detention Order information regarding the cost of supervision and care, the parent is deemed to have an obligation to pay DJJ one dollar (\$1.00) per day for each day the child is under the supervision of DJJ and five dollars (\$5.00) per day for each day the child remains in the care of DJJ. § 985.039(5).

**The child’s fingerprints** must be affixed to the order of disposition. Rule 8.115(e).

**Note:** As of July 1, 2021, § 985.435 requires each judicial circuit to develop, in consultation with judges, the state attorney, the public defender, the regional counsel, relevant law enforcement agencies, and the department, a written plan specifying the alternative consequence component which must be based upon the principle that sanctions must reflect:

- the seriousness of the violation
- the assessed criminogenic needs and risks of the child
- the child's age and maturity level, and
- how effective the sanction or incentive will be in moving the child to compliant behavior.

The alternative consequence component is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of any noncompliance with technical conditions of probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation, as well as incentives used to move the child toward compliant behavior, must be detailed in the disposition order.

## VIOLATION OF PROBATION HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 90.6063; 790.22; 985.033; 985.035; 985.039; 985.101; 985.245; 985.255; 985.26; 985.27; 985.433; 985.435; 985.437(2); 985.439</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin. 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.100; 8.110; 8.115; 8.120; 8.165; 8.929; 8.947</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	The purpose of the violation of probation hearing is to determine whether the child violated the terms and conditions of his or her probation or conditional release.
<b>TIME FRAME</b>	Violation of Probation hearing must be within the time limits set out in § 985.255.
<b>BURDEN OF PROOF</b>	The petitioner must prove the allegations of the violation of probation petition filed by the JPO. The burden of proof is by a preponderance of the evidence.
<b>RULES OF EVIDENCE</b>	The court is not required to follow the strict rules of evidence and may consider affidavits and other documents as are relevant, even though that evidence may not be admissible in a criminal trial.
<b>RIGHT TO COUNSEL</b>	The court must advise the child of his or her right to counsel and determine whether the right is understood. § 985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with § 27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. § 985.033; Rule 8.165.

## **VIOLATION OF PROBATION HEARING BENCHCARD**

### **Generally**

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the violation of probation hearing is to determine whether the child has violated the terms and conditions of his or her probation or conditional release.
- Place the child and any witnesses under oath.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

### **Advise the Child of Rights**

- Determine whether the child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel and determine whether the right is understood.
- If indigent, advise of the right to have counsel appointed. The court shall appoint counsel unless waived by the child. Waiver of counsel can only occur after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. This waiver shall be in writing.
- If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent and that anything the child says can be used against him or her.

### **Violation of Probation Determination**

- The court must consider the predisposition report if one was prepared.
- In addition to the predisposition report, the court must consider the underlying comprehensive assessment and records of earlier judicial proceedings.

- The court can require additional assessments of the child.
- If the court finds the child violated probation, the court shall enter an order revoking, modifying, or continuing probation or post-commitment probation. § 985.439(4).

### **Disposition Determination**

- State the factual basis for the determination. Tell the child the reasons for the determination clearly using language the child can understand. Verify that the child understands what the determination means, what will be expected of him or her, and the consequences of failing to act as required.
- Children committed to a residential program must be placed into some form of detention care pending placement into the residential program.

### **Requirements for Written Order of Disposition**

- State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- State the disposition of each count specifying the charge, the degree of offense, and the maximum penalty defined by statute.
- If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
- State general and specific conditions or sanctions.
- Make findings as to the disposition of the child. Include the facts underlying any finding.
- State the date and time when issued and the county and court where issued.
- Be signed by the court with the title of office.
- The child's fingerprints must be affixed to the order of disposition.
- State the period of the disposition.
- State whether the court retains jurisdiction over discharge.

## **VIOLATION OF PROBATION HEARING OUTLINE**

### **Generally**

- **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of a need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)-(b), and § 90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

- **Recording**

A record of all hearings must be made by an official court reporter, a court-approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

A violation of probation hearing determines whether the child has violated the terms and conditions of his or her probation or conditional release. When a child is alleged to have violated probation, it is necessary to determine whether the child should be held in detention pending the violation hearing. Section 985.439(2) requires a child taken into custody for violating the conditions of probation to be screened and (1) detained or (2) released based on his or her risk assessment instrument score. The DRAI may be completed and scored based on the underlying charge for which the child was placed under the supervision of the department. § 985.245(4). Therefore, the child may be subject to a more restrictive detention.

- **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. § 985.035.

- **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of the violation of probation hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. § 985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing if a party can show good cause for the continuance. Rule 8.100(e).

- **Place the Child and Any Witnesses Under Oath**

The court should place the child and any witnesses under oath. Rule 8.120(a)(5). Prior to the examination of any witnesses, the court may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule 8.100(d).

- **Other Proceedings Determination**

**Determine whether the child is involved in other court proceedings.** Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

## **Advise of Rights**

- **Right to Counsel**

Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age,

education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that if indigent, the child has the right to have counsel appointed by the court in accordance with § 27.52. § 985.033(1).

If counsel is waived, determine if the waiver is knowingly, intelligently, and voluntary. Section 985.033(1) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child. Waiver of counsel can only occur after the child has had a meaningful opportunity to confer with counsel regarding the right to counsel and the consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1).

- **Right to Communicate**

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically.



- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

## **Violation of Probation Determination**

- **The court shall ask the child to enter a plea.**

- **If the Child Admits**

If the child admits to the violation, the court shall enter an order revoking, modifying, or continuing probation or post-commitment probation. § 985.439(4).

- **If the Child Denies**

If the child denies the alleged violation, the court shall, at the child's request, appoint counsel to represent the child. § 985.439(3). The court shall subsequently hold a hearing to determine whether the child violated probation. The hearing may immediately follow the probable cause hearing or may be held at a future date. If the hearing is held at a future date and the child is in custody pending the hearing, the detention must comport with the criteria set out in § 985.255 and 985.26.

- **Rules of Evidence**

At the violation of probation hearing, the court is not required to follow the strict rules of evidence and may consider such affidavits and other documents as are relevant, even though such evidence may not be admissible in a criminal trial. *Wheeler v. State*, 344 So. 2d 630 (Fla. 2d DCA 1977).

- **Burden of Proof**

The prosecution must prove by a preponderance of the evidence that the child violated his or her probation. *W.B.S. v. State*, 851 So. 2d 802 (Fla. 2d DCA 2003).

- **Possible Court Actions**

If the court finds the child violated probation, the court shall enter an order revoking, modifying, or continuing probation or post-commitment probation. In each such case, the court shall enter a new disposition order and, in addition to the sanctions the court could have imposed at the original disposition hearing, the court may impose other sanctions as set out in § 985.439(4).

## Disposition Determination

A juvenile is not entitled to credit on probation for time spent in detention. However, once a violation of probation is filed, the child is entitled to credit for time served before the filing of the petition. *Davis v. State*, 667 So. 2d 885 (Fla. 1st DCA 1996). Additionally, upon revocation of probation, the time a child has already served on probation for a given offense must be credited toward any new term of probation imposed for that offense, when necessary, to ensure that the total term of probation does not exceed the statutory maximum for that offense. *State v. Summers*, 642 So. 2d 742 (Fla. 1994).

Upon the revocation of juvenile probation, the court shall, when the child has been placed on juvenile probation and adjudication has been withheld, adjudicate the child delinquent. In all cases after revocation of juvenile probation, the court shall enter a new disposition order. Rule 8.120(a)(5).

## Requirements for a Written Order

- **If the court finds that the child has violated the conditions of probation or post-commitment probation, the court shall enter a new disposition order and may impose further sanctions as noted above. The new disposition order can be found in the Supreme Court-approved forms, Form 8.947.**
  - **Name and age.** State the name of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty. State the age of the child. If the age is unknown, state that the child is believed to be of an age that makes him or her subject to the juvenile proceedings. Rule 8.115(d)(1).
  - **Date and time.** Specify the date and time when issued and the county and court where issued. Rule 8.115(d)(5).
  - **Waiver of Counsel.** If counsel waived, make finding that the waiver was knowing, voluntary, and intelligent.
  - **Finding of fact.** Make all findings of fact required by law. Rule 8.115(d)(4).
  - **Detention directions.** Direct the detention of the child and state the reasons therefore, or, if appropriate, order the release of the child and return to their nonresidential commitment program. Rule 8.115(d)(3).
  - **Specify offenses.** If the petition alleges more than one offense or an offense divided into degrees, the court shall specify which offense or offenses of which the child has been adjudicated delinquent. Rule 8.110(i).

- **Disposition.** State the disposition of each count specifying the charge title, the degree of offense, and the maximum penalty defined by statute and specifying the amount of time served in secure detention before disposition. Rule 8.115(d)(2)-(d)(3).
- **Special disposition.** Order probation, restitution, community service, curfew, and/or apologies as appropriate. Order no contact with victims, if appropriate. Rule 8.115(d)(3).
- **Determination of gang membership.** Include any determination that the child was a member of a criminal gang. § 985.433(7).
- **Release instructions.** Except as provided in s. 790.22(8) or s. 985.27, when a child is placed into detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or 1s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be held within 3 calendar days after the child's initial detention placement. § 985.255(3)(c).
- **Finding of cost.** The court must make a finding regarding cost or supervision and care or make a finding as to any reduction or waiver of cost, including therein the reasons for such a finding. § 985.039. When a child is placed into supervised release detention, probation, or another supervised status with the DJJ, or when a child is committed to a minimum-risk non-residential restrictiveness level, order the parent or guardian to pay one dollar (\$1.00) per day to the DJJ for each day the child is in that status. § 985.039(1)(a).

If a child is placed in secure detention or placed on committed status and the DJJ acquires temporary legal custody of said child, order the parent or guardian to pay five dollars (\$5.00) per day to the DJJ for each day the child is in that status. § 985.039(1)(b).

If the court fails to include in the Detention Order information regarding the cost of supervision and care, the parent is deemed to have an obligation to pay DJJ one dollar (\$1.00) per day for each day the child is under the supervision of DJJ and five dollars (\$5.00) per day for each day the child remains in the care of DJJ. § 985.039(5). See General Topics for more information on costs.

**In addition** to the above requirements, the court may:

- Place the child in supervised release detention with electronic monitoring.
- If the violation of probation is technical in nature and not a new violation of law, place the child in an alternative consequence program designed to provide swift and appropriate consequences to any further violations of probation.
  - Alternative consequence programs shall be established, within existing resources, at the local level in coordination with law enforcement agencies, the chief judge of the circuit, the state attorney, and the public defender.
  - Alternative consequence programs may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, a county or municipality, or another entity selected by the department.
  - Upon placing a child in an alternative consequence program, the court must approve specific consequences for specific violations of the conditions of probation.
- Modify or continue the child's probation program or post-commitment probation program.
- Revoke probation or post-commitment probation and commit the child to the department.

§ 985.439(4)(a)-(d).

The court has available any sanctions it could have imposed at the original disposition hearing. § 985.439(4).

The court may also order the child to submit to random testing for the purposes of detecting and monitoring the use of alcohol or controlled substances. § 985.439(5).

The child's fingerprints shall be affixed to the order of disposition. Rule 8.115(e).

**Note:** As of July 1, 2021, § 985.435 requires each judicial circuit to develop, in consultation with judges, the state attorney, the public defender, the regional counsel, relevant law enforcement agencies, and the department, a written plan specifying the alternative consequence component which must be based upon the principle that sanctions must reflect:

- the seriousness of the violation
- the assessed criminogenic needs and risks of the child
- the child's age and maturity level, and
- how effective the sanction or incentive will be in moving the child to compliant behavior.

The alternative consequence component is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of any noncompliance with technical conditions of probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation, as well as incentives used to move the child toward compliant behavior, must be detailed in the disposition order.

## CONTEMPT OF COURT HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 90.6063; 985.033; 985.035; 985.036; 985.037; 985.039; 985.24; 985.255(3)(c); 985.26; 985.27; 985.437(2). 985.513</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin. 2.560; 2.545(d)</p> <p>Rules of Juvenile Procedure 8.003; 8.010; 8.015; 8.030; 8.031; 8.100; 8.150; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	The purpose of the contempt of court hearing is to determine whether the child has violated the terms and conditions of a court order.
<b>TIME FRAME</b>	Direct contempt may be addressed by the court immediately. The hearing for indirect contempt must be held within 24 hours of the child being charged with indirect contempt.
<b>BURDEN OF PROOF</b>	Presumed innocent until proven guilty beyond a reasonable doubt.
<b>RULES OF EVIDENCE</b>	Rules of evidence used in criminal cases.
<b>RIGHT TO COUNSEL</b>	The court must advise the child of his or her right to counsel and determine whether the right is understood. § 985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with § 27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. § 985.033; Rule 8.165.

## CONTEMPT OF COURT HEARING BENCHCARD

### Generally

- Determine whether an interpreter is needed to facilitate communication at the hearing.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the indirect criminal contempt of court hearing is to determine whether the child has committed indirect criminal contempt of a valid court order.
- Place the child and any witnesses under oath.
- Have all the parties identify themselves for the record with full name and current address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the hearing.
- Determine whether the victim and/or the victim's parents, guardian, lawful representative, or next of kin has been informed of the date and time of the hearing.
- Determine whether the child, or his or her family, is involved in other court proceedings and if Notice of Related Cases form as required by Rule 2.545(d) and Rule 8.003 is, or should be, filed in the case. Consider how to consolidate or coordinate any related cases.

### Advise of Rights

- Determine whether the child is represented by counsel.
- If the child appears without counsel, advise the child that he or she has the right to have counsel appointed and determine whether the right is understood.
- The court shall appoint counsel unless waived by the child in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent and that anything the child says can be used against him or her.
- Advise the child of his or her due process rights.

## **Direct Contempt Procedure**

- Inform the child of the child as to the basis for the contempt by stating the facts on which the accusation is based.
- Ensure that the child understands he or she has the right to be represented by counsel and afford the child his or her due process rights.
- Inquire as to whether the child can show cause as to why he or she should not be adjudicated guilty of contempt.
- Give the child an opportunity to present evidence of excusing or mitigating circumstances.
- Announce the findings and the judgment and enter if of record.
- Pronounce the sentence in open court.

## **Indirect Contempt Hearing Procedure**

- On affidavit of any person with personal knowledge of the facts, the court may issue and sign an Order to Show Cause.
- The Order to Show Cause must state the essential facts constituting the contempt charged and specify the time and date the child must appear before the court to show cause.
- The Order to Show Cause must be served in the same manner as a summons, but the child may waive service of process.
- The court must hold a hearing within 24 hours.
- If the court provides clear and convincing reasons in writing as to why it believes the child will not appear in response to the order to show cause, the court may issue a pick-up order to have the child detained before the hearing.
- The child may move to dismiss the order to show cause, move for a statement of particulars, admit to the offense, or enter a denial and request a hearing. The court should verify that the child understands the implications and potential consequences of each action.
- Conduct the hearing following the rules of evidence used in criminal cases and afford the child the following rights:
  - The right to be represented by legal counsel,
  - The right to testify in his or her own defense,
  - The right to confront witnesses,
  - The right to subpoena and present witnesses,
  - The right to have the hearing recorded and a copy of such recording,
  - The right to have a transcript of the proceeding, and
  - The right to appeal.
- At the conclusion of the hearing, sign and enter a judgment of guilty or not guilty, including the facts and findings used to arrive at the judgment.
- Before the pronouncement of sentence, inform the child of the accusation and judgment against him or her and inquire as to whether there is any cause to show why the sentence should not be pronounced. Afford the



child an opportunity to present evidence of mitigating circumstances. Consider all available and appropriate sentences, including alternative sanctions, and pronounce the sentence in open court and in the presence of the child.

- Note: If the contempt charged involves disrespect to or criticism of a judge, the child may motion for the judge to be disqualified, and the chief judge of the circuit must disqualify that judge from the matter.

## **Sanctions**

- Follow the sanction guide to determine which sanctions are appropriate.
- The court may not order the child to be placed in a secure detention facility for punishment for contempt unless the court determines that an alternative sanction is inappropriate or unavailable or that the child was initially ordered to an alternative sanction and did not comply.
- The court is encouraged to order a child to perform community service, up to the maximum number of hours, where appropriate, before ordering that the child be placed in a secure detention facility as punishment for contempt of court.
- In addition to any other sanction imposed, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend, a child's driver license or driving privilege.
- Explain to the child in clear, simple language what the sanctions mean, what will be expected of him or her, and the consequences of failing to act as required.

## **Requirements for a Written Judgment of Contempt**

- State the name and address of the child.
- If counsel was waived, make a finding that the waiver was knowing, intelligent, and voluntary.
- Include a recital of the facts constituting the contempt of which the child was found guilty.
- State the sanctions applicable for the child.
- Make a finding regarding the cost of supervision and care.
- State the date and time when issued and the county and court where issued.
- Include a signature by the court with the title of office.

## CONTEMPT OF COURT HEARING OUTLINE

### Generally

- **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of a need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6); Rule 2.560. If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. § 90.6063(3)(b); Rule 14.100. If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(3). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

- **Direct Contempt of Court**

After a hearing, direct contempt of court may be punished immediately if the court saw or heard the conduct constituting contempt. The court must inform the child as to the basis for the contempt by stating the facts on which the accusation is based. At the hearing, the child has the right to be represented by counsel and shall be afforded due process. The court must inquire as to whether the child can show cause as to why he or she should not be adjudicated guilty of contempt and give the child an opportunity to present evidence of excusing or mitigating circumstances. A sentence for direct contempt must be made in open court, and the judgment must be signed by the court and entered of record. § 985.037(4)(a); Rule 8.150(b).

- **Indirect Contempt of Court**

On affidavit of any person with personal knowledge of the facts, the court may issue and sign an Order to Show Cause for Indirect Contempt of a valid court order. The order must state the essential facts constituting the contempt charged and specify the time and date the child must appear before the court to show cause. The order must be served in the same manner as a summons, but the child may waive service of process. The court must hold the hearing within 24 hours. If the court provides clear and convincing reasons in writing as to why it believes the child will

not appear in response to the order to show cause, the court may issue a pick-up order to have the child detained before the hearing.

The child may respond to the Order to Show Cause by motion to dismiss the order to show cause, motion for a statement of particulars, admitting to the offense, or entering a denial and requesting a hearing. The court should verify that the child understands the implications and potential consequences of each action.

At the hearing, the rules of evidence used in criminal cases apply, and the child is specifically afforded the following due process rights: the right to be represented by legal counsel, to testify in his or her own defense, to confront witnesses, to subpoena and present witnesses, to have the hearing recorded and a copy of such recording, have a transcript of the proceeding, and to appeal. The child's parent or guardian may address the court regarding the due process rights of the child.

At the conclusion of the hearing, the court must sign and enter a written judgment of guilty or not guilty, including the facts and findings used to arrive at the judgment.

Before the pronouncement of the sentence, the court must inform the child of the accusation and judgment against him or her and inquire as to whether there is any cause to show why the sentence should not be pronounced. The court must afford the child an opportunity to present evidence of mitigating circumstances.

To determine the appropriate sentence, the court must consider all available and appropriate sentences, including alternative sanctions. The court may not order a child to be placed in a secure detention facility for punishment for contempt unless the court determines that an alternative sanction is inappropriate or unavailable or that the child was initially ordered to an alternative sanction and did not comply with the alternative sanction. The court is encouraged to order a child to perform community service, up to the maximum number of hours, where appropriate, before ordering that the child be placed in a secure detention facility as punishment for contempt of court. If secure detention is held to be the appropriate sanction for a delinquent child who has been found to be in direct or indirect contempt of court, the detention may not exceed 5 days for a first offense and may not to exceed 15 days for a second or subsequent offense. In addition to any other sanction imposed, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend, a child's driver license or driving privilege.

Finally, the sentence must be pronounced in open court and in the presence of the child.

Note: If the contempt charged involves disrespect to or criticism of a judge, the child may motion for the judge to be disqualified, and the chief judge of the circuit must disqualify that judge from the matter.

See § 985.037(4)(b); Rule 8.150(c).

- **Recording**

A record of all hearings must be made by an official court reporter, a court-approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

An indirect contempt of court hearing determines whether the child has breached or violated a valid court order.

- **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. § 985.035.

- **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine what steps were taken to locate and serve them with notice of the hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check, before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of the contempt hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. § 985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing if a party can show good cause for the continuance. Rule 8.100(e).

Victims and their family members or lawful representatives have a right

to be informed of, to be present during, and to be heard, when relevant, at all crucial stages of proceedings involving the accused juvenile. § 985.036.

- **Place the Child and Any Witnesses Under Oath**

The court should place the child and any witnesses under oath. Prior to the examination of any witnesses, the court or any party may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule 8.100(d).

- **Other Proceedings Determination**

Determine whether the child is involved in other court proceedings and if a Notice of Related Cases form as required by Rule 2.545(d) and Rule 8.003 is, or should be, filed in the case. Consider how to consolidate or coordinate related cases. *See also* Form 8.929.

## **Advise of Rights**

- **Right to be Represented by Counsel**

Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding, and § 985.037 and Rule 8.150 both specifically note the child's right to be represented by counsel at contempt hearings.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, he or she has the right to have counsel appointed by the court in accordance with § 27.52. § 985.033(4).

If counsel is waived, determine if the waiver is made knowingly, intelligently, and voluntarily. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1).

- **Right to Communicate**

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

- **Due Process Rights**

Advise the child of his or her due process rights. The following due process rights must be provided to the child:

- The right to a copy of the order to show cause alleging facts supporting the contempt charge.
- The right to an explanation of the nature and the consequences of the proceedings.

- The right to legal counsel and the right to have legal counsel appointed by the court if the juvenile is indigent, under § 985.033.
- The right to confront witnesses.
- The right to present witnesses.
- The right to have a transcript or record of the proceeding.
- The right to appeal to an appropriate court. § 985.037(4)(b)(1)-(7).

The transcript or recording, if requested by a motion to the court, is paid for by the state.

Note: The child's due process rights as set out in statute differ slightly from those enumerated in Rule 8.150(c)(5).

## **Indirect Contempt Hearing Procedure**

- **Issue an Order to Show Cause**

This may be done on the court's own motion or upon an affidavit of any person having knowledge of the facts. Rule 8.150(c)(2). The order shall specify the time and place of the hearing, with reasonable time allowed for the preparation of a defense after service of the order on the accused, Rule 8.150(c)(2), but the hearing must take place within 24 hours of the child being charged. § 985.037(4)(b). The child may move to dismiss the order, move for a statement of particulars, admit to the offense or enter a denial and request a hearing. Rule 8.150(c)(3).

- **Detention Before the Hearing**

The court may only detain the child before the contempt hearing solely on the contempt proceeding if the court provides clear and convincing reasons in writing demonstrating the court's belief that the child will fail to appear in response to the order to show cause. Rule 8.150(c)(4).

- **Burden of Proof**

The burden of proof in indirect contempt hearings is the same as for criminal cases; the state must prove the child's guilt beyond a reasonable doubt. *Forbes v. State*, 933 So. 2d 706 (Fla. 4th DCA 2006).

- **Judgment and Pronouncement of Sentence**

At the conclusion of the hearing, sign and enter a judgment of guilty or not guilty. Include in the judgment a recital of the facts constituting the contempt of which the accused has been found guilty. Rule 8.150(c)(6).

Before the pronouncement of the sentence, the court must inform the child of the accusation and judgment against him or her and inquire as to whether there is any cause to show why the sentence should not be

pronounced. The court must afford the child an opportunity to present evidence of mitigating circumstances. Rule 8.150(c)(7).

To determine the appropriate sentence, the court must consider all available and appropriate sentences, including alternative sanctions. Rule 8.150(c)(7). The court may not order a child to be placed in a secure detention facility for punishment for contempt unless the court determines that an alternative sanction is inappropriate or unavailable or that the child was initially ordered to an alternative sanction and did not comply with the alternative sanction. § 985.037(4)(c). The court is encouraged to order a child to perform community service, up to the maximum number of hours, where appropriate, before ordering that the child be placed in a secure detention facility as punishment for contempt of court. § 985.037(4)(c). If secure detention is held to be the appropriate sanction for a delinquent child who has been found to be in direct or indirect contempt of court, the detention may not exceed 5 days for a first offense and may not exceed 15 days for a second or subsequent offense. § 985.037(2). In addition to any other sanction imposed, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend, a child's driver license or driving privilege. § 985.037(4)(d).

Finally, the sentence must be pronounced in open court and in the presence of the child. Rule 8.150(c)(7).

## **Sanctions**

- **Mandatory Sanctions**

Upon determining a child has committed indirect contempt of court, the court must order the child to perform 50 hours of community-service manual labor or a similar alternative sanction, unless an alternative sanction is unavailable or inappropriate, or unless the child has failed to comply with a prior alternative sanction. § 985.037(3). The court may request the alternative sanctions coordinator to recommend the most appropriate available alternative sanction. § 985.037(3).

- **If No Alternative Sanctions**

If alternative sanctions are unavailable or inappropriate, or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction, the court may order the child to be placed in a secure detention facility for purposes of punishment for contempt of court. § 985.037(2). The court is encouraged to order the child to perform community service where appropriate before ordering that the child be placed in a secure facility as punishment for contempt of court. §



985.037(4)(c). A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility not to exceed:

- 5 days for a first offense; and
- 15 days for a second or subsequent offense. § 985.037(2).

Upon motion by the defense attorney or state attorney, the court shall review the placement of the child to determine whether it is appropriate for the child to remain in the facility. § 985.037(4)(b).

- **Discretionary Sanction**

In addition to any sanction imposed under this section, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend a child's driver's license or driving privilege. § 985.037(4)(d). The court may order the child's driver's license or driving privilege be withheld or suspended for up to:

- 1 year for a first offense; and
- 2 years for a second or subsequent offense. § 985.037(4)(d).

If the child's driver's license or driving privilege is being withheld or suspended at the time the sanction for contempt is imposed, the period of suspension or revocation shall begin on the date on which the child is otherwise eligible to drive. § 985.037(4)(d).

## **Requirements for a Written Judgment of Contempt**

- **At the conclusion of the hearing, the court shall enter and record a judgment of guilty or not guilty. Rule 8.150(c)(6). The judgment shall be in writing and include the following:**
  - **Name and address.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
  - **Age and gender.** State the age and sex of the child. If the age is unknown, state that the child is believed to be of an age that makes him or her subject to the juvenile proceedings.
  - **Date and time.** State the date and time when issued and the country and court where issued.
  - **Waiver of Counsel.** If counsel waived, make finding that the waiver was knowing, voluntary, and intelligent.
  - **Recitation of facts.** Include a recital of the facts constituting the contempt of which the accused has been found guilty.
  - **Applicable sanctions.** State the sanctions applicable to the child.
  - **Release instructions.** If the child is placed into secure detention, supervised release, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child

from such placement no later than 5:00 p.m. on the last day of the detention period. § 985.255(3)(c).

- **Finding of cost.** The court must make a finding regarding cost or supervision and care or make a finding as to any reduction or waiver of cost, including therein the reasons for such a finding. § 985.039. When a child is placed into supervised release detention, probation, or other supervised status with DJJ, or when a child is committed to a minimum-risk non-residential restrictiveness level, order the parent to pay one dollar (\$1.00) per day to DJJ for each day the child is in that status. § 985.039(1)(a).

If a child is placed in secure detention or placed on committed status and DJJ acquires temporary legal custody of said child, order the parent to pay five dollars (\$5.00) per day to DJJ for each day the child is in that status. § 985.039(1)(b).

If the court fails to include in the Detention Order information regarding the cost of supervision and care, the parent is deemed to have an obligation to pay DJJ one dollar (\$1.00) per day for each day the child is under the supervision of DJJ and five dollars (\$5.00) per day for each day the child remains in the care of DJJ. § 985.039(5).

## WAIVER OF JURISDICTION HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 90.6063; 985.033; 985.035; 985.319; 985.556; 985.557; 985.57</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin. 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.100; 8.105; 8.160; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	The purpose of the waiver of jurisdiction hearing is to determine whether the child should remain under the juvenile court's jurisdiction or be transferred to another court.
<b>TIME FRAME</b>	The hearing must be held within 7 days (excluding Saturdays, Sundays, and legal holidays) after the date of the petition alleging that the child has committed a delinquent act or violation of the law has been filed, or later with approval from the court.
<b>RULES OF EVIDENCE</b>	Section 985.556 specifies what the court shall consider.
<b>RIGHT TO COUNSEL</b>	The court must advise the child of his or her right to counsel and determine whether the right is understood. § 985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with § 27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. § 985.033; Rule 8.165.

## **WAIVER OF JURISDICTION HEARING BENCHCARD**

### **Generally**

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the waiver of jurisdiction hearing is to determine whether the child should be transferred to the jurisdiction of another court.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

### **Advise of Rights**

- Determine whether the child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel and determine whether the right is understood.
- If indigent, advise of the right to have counsel appointed. The court shall appoint counsel unless waived by the child. Waiver of counsel can only occur after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. This waiver shall be in writing.
- If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary.
- Advise the child of his or her right to remain silent and that anything the child says can be used against him or her.

### **Determine the Type of Waiver**

### **Issue a Summons**

### **Consider the Evidence Presented**

- Prior to the hearing, an authorized agent of the department shall prepare a

study and report relevant to the issue of jurisdiction.

- The child and the child's parents or guardians and counsel shall have the right to examine these reports and question the parties responsible for them. Verify that the child understands how he or she can act on this right.

### **Jurisdiction Determination**

- Explain the determination to the child in clear, simple language. Verify that the child understands what will happen next, what will be expected of him or her, and the consequences of failing to act as required.

### **Requirements for Written Order on Waiver of Jurisdiction**

- State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
- Include specific findings of fact with respect to and in consideration of the criteria in § 985.556(c).
- Include the reasons to impose adult sanctions.
- State the date and time when issued and the country and court where issued.
- Sign the order by the court with the title of office.

## WAIVER OF JURISDICTION HEARING OUTLINE

### Generally

- **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of a need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)-(b), and § 90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

- **Recording**

A record of all hearings must be made by an official court reporter, a court-approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

A waiver of jurisdiction hearing determines whether the child should be transferred to the jurisdiction of another court. A child can be tried criminally as an adult if juvenile jurisdiction is waived by the circuit court, or the case is transferred to criminal court because of a direct filing or indictment. Rule 8.105; §§ 985.556-985.57.

- **Identify those present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. § 985.035.

- **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a

detailed and thorough list of sources he or she must check before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

- **Other Proceedings Determination**

**Determine whether the child is involved in other court proceedings.**

Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

## **Advise of Rights**

- **Right to Counsel**

Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, the child has the right to have counsel appointed by the court in accordance with §§ 27.52 and 985.033(4).

If counsel is waived, determine if the waiver is knowingly, intelligently, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the right to counsel and consequences of waiving

counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1).

- **Right to Communicate**

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

## **Determine the Type of Waiver**

- **Voluntary Waiver**

A waiver is voluntary if the child demands in writing to be tried as an adult. The circuit court must transfer and certify the child's case for trial as an adult. The demand must be made prior to the commencement of an adjudicatory hearing and must be joined by a parent or, in the absence of a parent, the guardian or guardian ad litem. § 985.556(1).

- **Discretionary Involuntary Waiver**

A waiver is involuntary and discretionary if the child was 14 years old at the time of the alleged act. The state attorney has the discretion to file a motion requesting the court to waive jurisdiction and transfer and certify a child's case for trial as an adult. § 985.556(2).



- **Mandatory Involuntary Waiver**

A waiver is involuntary and mandatory if the child was 14 years old at the time of the alleged act, and if:

- if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a second or subsequent violent crime against a person; or
- If the child was 14 years of age or older at the time of the commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for, or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person. § 985.556(3).

The state attorney must request the court to transfer the child to an adult court, shall provide written reasons to the court for not making such a request, or proceed under § 985.557(1).

## **Issue a Summons**

**The summons must be issued and served** in conformity with § 985.319. Verify that a copy of the motion and a copy of the delinquency petition, if not already served, are attached to each summons. § 985.556(4)(b).

## **Consider the Evidence Presented**

- **Study and Report by DJJ**

Prior to the hearing, a study and report must be made by an authorized agent of the DJJ. § 985.556(4)(d). This report and study will analyze factors that assist the court in making the determination, including:

- The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions.
- Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
- Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
- The probable cause as found in the report, affidavit, or complaint.

- The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults.
  - The sophistication and maturity of the child.
  - The record and previous history of the child, including:
    - Previous contacts with the department, the Department of Corrections, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, other law enforcement agencies, and courts;
    - Prior periods of probation;
    - Prior adjudications that the child committed a delinquent act or violation of law, greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving an offense classified as a felony or has twice previously been found to have committed a delinquent act or violation of law involving an offense classified as a misdemeanor; and
    - Prior commitments to institutions.
  - The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense by the use of procedures, services, and facilities currently available to the court. § 985.556(4)(c)(1)-(8).
- **Child's Right to Examine**  
The child and the child's parents or legal guardians and counsel and the state attorney shall have the right to examine these reports and to question the parties responsible for them at the hearing. § 985.556(4)(d).
  - **Additional Materials Available**  
The court shall consider the study and report, as well as other evidence and testimony offered, when making its determination.

## **Jurisdiction Determination**

- **Order Waiving Jurisdiction**  
The court may enter an order waiving jurisdiction and certifying the case for trial as if the child were an adult. Rule 8.105(b)(5)(A). The order must set forth the basis for the decision. Rule 8.105(b)(5)(A). Provide copies to all the parties, and provide a certified copy to the clerk of the court having jurisdiction to try the child as an adult and to the prosecuting officer of said court within 5 days of the date of the order. Rule 8.105(b)(5)(A). The child is to be immediately delivered to the sheriff of the county in which the adult court is located. Rule 8.105(b)(5)(A).
- **Order Denying Waiver of Jurisdiction**

The court may enter an order denying the waiver of jurisdiction and give reasons for this denial. Rule 8.105(b)(5)(B). If the waiver is denied, the court, with the consent of the state and the child, may proceed immediately with the adjudicatory hearing. Rule 8.105(b)(5)(B).

### **Requirements for a Written Order on Waiver of Jurisdiction**

- **Name and address.** State the name and address of the child or if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- **Age and gender.** State the age and sex of the child. If the age is unknown, state that the child is believed to be of an age that makes him subject to the juvenile proceedings.
- **Date and time.** State the date and time the order is issued, the county and court from where issued, and the date and time the child was taken into custody.
- **Waiver of counsel.** If counsel waived, make finding that the waiver was knowing, intelligent, and voluntary.
- **Recitation of facts.** Include specific findings of fact with respect to and in consideration of the criteria in § 985.556(c).
- **Rationale.** Include the reasons to impose adult sanctions.

## RESTITUTION HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 775.089; 90.6063; 985.0301; 985.033; 985.035; 985.437(2).</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin. 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.100; 8.165, 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	The purpose of the restitution hearing is to set restitution amount if not determined at disposition, to determine whether the child or the child's parents or guardians are current with restitution payments, or to order the payments to begin if the payor failed to make payments as ordered.
<b>BURDEN OF PROOF</b>	Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence.
<b>RULES OF EVIDENCE</b>	Rules of evidence used in civil cases.
<b>RIGHT TO COUNSEL</b>	The court must advise the child of his or her right to counsel and determine whether the right is understood. § 985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with § 27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. § 985.033; Rule 8.165.

## **RESTITUTION HEARING BENCHCARD**

### **Generally**

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the restitution hearing is to set restitution amount if not determined at disposition, to determine whether the child or the child's parents or guardians are current with restitution payments, or to order the payments to begin if payor failed to make payments as ordered.
- Place the child and any witnesses under oath.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

### **Advise of Rights**

- The child has a right to be present at any restitution hearing.
- Determine whether the child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel and determine whether the right is understood.
- If insolvent, advise the child that he or she has the right to have counsel appointed.
- If the child does not have counsel, appoint counsel as necessary unless waived in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If the child waives counsel, determine if the waiver is knowing, intelligent, and voluntary.

## **Hearing Procedure**

- If the child adjudicated delinquent and the state attorney could not agree to a restitution amount at disposition, the hearing will be to determine the amount of restitution due and payment process.
- If the restitution amount is set and the child adjudicated delinquent is challenging the amount, the hearing will be to review the amount of restitution due and modify as necessary.
- If the restitution amount is set and the state attorney requested the hearing to review compliance, the hearing will be to verify compliance and enforce the order in the same manner as a judgment in a civil action.

## **Restitution Determination**

- Explain to the child what the determination means and how the court arrived at that determination in clear, simple language.
- On any finding that restitution is due, verify that the child knows what is required of him or her and the consequences of failing to act as required.

## **Requirements for a Written Order of Restitution**

- State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- State the name and address of the parent or guardian or, if unknown, designate the parent or guardian by a name or description that can identify the parent or guardian with reasonable certainty.
- State the name and address of the payee.
- State the case number.
- State the date.
- State the amount paid.
- State the amount due.
- List any other fees due.

## RESTITUTION HEARING OUTLINE

### Generally

- **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of the need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)-(b), and § 90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

- **Recording**

A record of all hearings must be made by an official court reporter, a court-approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

The purpose of the restitution hearing is to set restitution amount if not determined at disposition, to determine whether the child or the child's parents or guardians are current with restitution payments, or to order the payments to begin if the payor failed to make payments as ordered. It can be initiated at the request of the payor or the state attorney. See General Topics for more information on restitution.

- **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. § 985.035.

- **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the

detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.

The nonattendance by a parent or guardian may require the continuance of the restitution hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. § 985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing if a party can show good cause for the continuance. Rule 8.100(e).

- **Place the Child and Any Witnesses Under Oath**

The court should place the child and any witnesses under oath. Prior to the examination of any witnesses, any party may invoke the rule to have the witnesses sequestered to prevent communication between the witnesses. Rule 8.100(c).

- **Other Proceedings Determination**

**Determine whether the child is involved in other court proceedings.**

Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

## **Advise of Rights**

- **Right to be Present**

The child has a right to be present at any restitution hearing. *T.L. v. State*, 967 So. 2d 421 (Fla. 1st DCA 2007).

- **Right to Counsel**

Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age,



education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, the child has the right to have counsel appointed by the court in accordance with § 27.52. § 985.033(4).

If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1).

- **Right to Communicate**

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;

- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

## Hearing Procedure

The restitution review hearing can be requested by the state attorney or the child adjudicated delinquent.

- **Rules of Evidence**

Any dispute as to the proper amount or type of restitution shall use the rules of evidence used in civil cases and shall be resolved by the court by the preponderance of the evidence. §775.089(7).

- **When Restitution Amount is in Dispute**

If the child adjudicated delinquent and the state attorney could not agree to a restitution amount at disposition, the hearing will be to determine the amount of restitution due and the payment process. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state attorney. § 775.089(7).

- **When setting the amount of restitution**, consider the fair market value of the items the victim asked restitution for and offset any salvage value if the items are returned. *G.M.H. v. State*, 18 So. 3d 728 (Fla. 2d DCA 2009). Fair market value can be determined by looking at:
  - Original market cost;
  - Manner in which the item was used;
  - The general condition and quality of the item; and
  - The percentage of depreciation. *K.W. v. State*, 983 So. 2d 713 (Fla. 2d DCA 2008)
- However, that although fair market valuation is the common approach to determine restitution, it is not the only permissible approach. The court may base restitution awards on out-of-pocket costs, offsetting the award by the salvage value of any items returned. *C.M.S. v. State*, 997 So. 2d 520 (Fla. 2d DCA 2008).
- **Restitution may not be ordered** for items not referenced in the charging document. *G.P. v. State*, 996 So. 2d 920 (Fla. 4th DCA 2008).

- **Where Child is Challenging Restitution Amount**

If the restitution amount is set and the child adjudicated delinquent is challenging the amount, the hearing will be to review the amount of restitution due and modify as necessary. The burden of demonstrating

the amount of the loss sustained by a victim as a result of the offense is again on the state attorney. §775.089(7). In calculating the value of the items, the court may use the fair market valuation method above or another acceptable method at its discretion.

- **Where there is Noncompliance with a Valid Restitution Order**

If the restitution amount is set and the state attorney requested the hearing to review compliance, the hearing will be to verify compliance and enforce the order in the same manner as a judgment in a civil action. The burden of demonstrating the present financial resources, the absence of potential future financial resources, and the financial needs of the payor is on the payor. §775.089(7). Remind the payor that the juvenile court may retain jurisdiction over the child or child's parent or guardian until the restitution order is satisfied. § 985.0301(5)(i).

## **Restitution Determination**

Explain to the child what the determination means and how the court arrived at that determination in clear, simple language.

On any finding that restitution is due, verify that the child knows what is required of him or her and the consequences of failing to act as required.

Where the court orders restitution, the court may be in installments or may be in lump sum immediately. § 775.089(3)(a), (c). Where the order is silent as to the manner of payment of restitution, restitution must be made immediately. § 775.089(3)(d).

The court may order the clerk of the court to collect and dispense restitution payments. § 775.089(11)(a).

## **Requirements for a Written Order of Restitution**

- **The contents of the restitution are limited by § 985.0301(5)(i). The restitution order shall include:**
  - **Name and address of the child.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
  - **Name and address of the parents or guardians.** State the name and address of the parent or guardian or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
  - **Name and address of the payee.** State the name and address of the payee.
  - **Case number.** State the case number.

- **Date and amount.** State the date and amount of restitution ordered.
  - **Amount paid.** State the amount, if any, of restitution paid to date.
  - **Amount due.** State the amount of restitution due and owing.
  - **Other fees due.** State that costs, interest, penalties, and attorney's fees may also be due and owing.
- 
- **Terms Subject to §775.089(5)**

Note that the terms of the restitution order are subject to §775.089(5), which discusses the enforcement of a restitution order. Restitution orders can be enforced in the same manner as a judgment in a civil action. The outstanding restitution bears interest and, when properly recorded, becomes a lien on any real estate owned by the child or the child's parent or guardian. If civil enforcement is necessary, the child or child's parent or guardian is responsible for costs and attorney's fees incurred by the victim in enforcing the order.

## COMPETENCY HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 90.6063; 985.033; 985.035; 985.19</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin. 2.560</p> <p>Rules of Juvenile Procedure 8.010; 8.015; 8.030; 8.031; 8.085; 8.090; 8.095; 8.100; 8.165; 8.929</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	The purpose of the competency hearing is to determine whether the child alleged delinquent may be incompetent to proceed with the charges against him or her.
<b>BURDEN OF PROOF</b>	Clear and convincing evidence.
<b>RULES OF EVIDENCE</b>	Rules of evidence used in civil cases.
<b>RIGHT TO COUNSEL</b>	The court must advise the child of his or her right to counsel and determine whether the right is understood. § 985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with § 27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. § 985.033; Rule 8.165.

## COMPETENCY HEARING BENCHCARD

### Generally

- Determine whether an interpreter is needed to facilitate communications in the hearing process.
- Verify that the proceeding is being recorded or transcribed.
- Explain to the child that the purpose of the competency hearing is to determine whether the child may be incompetent to proceed with the charges against him or her.
- Have all the parties identify themselves for the record with full name and permanent address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the detention hearing.
- Determine whether the child is involved in other court proceedings. If the court is a UFC, consider consolidating the cases or hearing them together.

### Advise of Rights

- Determine whether the child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel and determine whether the right is understood.
- If insolvent, advise the child that he or she has the right to have counsel appointed.
- If the child does not have counsel, appoint counsel as necessary unless waived in writing. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If the child waives counsel, determine if the waiver is knowing, intelligent, and voluntary.

### Competency Hearing Procedure

- The court must, upon motion from the by the child or the state, or may upon the court's own motion, stay any and all proceedings and order an evaluation of the child's mental condition.
- The hearing shall be set for a time determined by the court. Verify that the child understands the purpose of the hearing in clear, simple language.

## **Competency Determination**

- All determinations of competency shall be based on the evaluation of the child's mental condition made by no less than two and no more than 3 experts appointed by the court, though other competent evidence may be introduced at the hearing. Explain to the child the purpose of the evaluations and how they are used in the proceeding.
- The evaluations by the court-appointed experts must include the basis for any determination and a recommendation as to whether residential or nonresidential treatment or training is required.
- The court shall determine whether the child is incompetent to proceed. Verify that the child understands what the determination means and what is expected of him or her.

## **Confinement Assessment**

- If the child is determined to be competent, proceed accordingly.
- If the child is determined to be incompetent, determine whether he or she must be given into the custody of the Department of Children and Families for treatment, training, or education.
- If the child is deemed incompetent to proceed but is not put into the custody of the Department of Children and Families, determine whether any form of court-ordered treatment is necessary and, if so, order it.
- If the child is determined to be incompetent, set the next hearing at most 6 months from the date of the order of incompetency.

## **Requirements for a Written Order of Incompetency**

- Name and address of the child.
- Include written findings that serve as the basis for the order.
- Specify the treatment ordered.
- Date of next hearing.

## COMPETENCY HEARING OUTLINE

### Generally

- **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of a need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6). If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. Rule 14.100(a)-(b), and § 90.6063(3)(b). If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(2). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

- **Recording**

A record of all hearings must be made by an official court reporter, a court-approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

The purpose of the competency hearing is to determine whether the child may be incompetent to proceed with the charges against him or her.

- **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. § 985.035.

- **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the detention hearing. Parents or guardians should be notified of the hearing. A representative from the agency responsible for serving notice on the parents or guardians must perform a diligent search following a detailed and thorough list of sources he or she must check before he or she can report the failure to notice. See General Topics for more information on the diligent search requirement.



- **Other Proceedings Determination**

**Determine whether the child is involved in other court proceedings.**

Form 8.929. If the court is a UFC, consider consolidating the cases or hearing them together.

## **Advise of Rights**

- **Right to Counsel**

Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, the child has the right to have counsel appointed by the court in accordance with §§ 27.52 and 985.033(4).

If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of

counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1).

- **Right to Communicate**

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility with regard to the hearing when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

## **Competency Hearing Procedures**

- **Stay any and all Proceedings**

The court must, upon motion from the by the child or the state, or may upon the court's own motion, stay any and all proceedings and order an evaluation of the child's mental condition. § 985.19(1). If the child's attorney submitted the motion, the motion must include a certificate that the motion was made in good faith and on reasonable grounds to believe that the child is incompetent to proceed. Rule 8.095(a)(1)(A). The motion must include a recital of observations and facts that, while not invading lawyer-client privilege, form the basis for the motion. Rule 8.095(a)(1)(A). If the state files the motion, the motion must include a certificate that the motion is made in good faith and on reasonable grounds to believe that the child is incompetent, including a recital of observations and statements of the child that have formed the basis for the motion. Rule 8.095(a)(1)(B).

- **Service**

Any motion questioning the competency of a child must be served on the child's attorney, the state attorney, the attorneys representing the Department of Children and Families, and the attorneys representing the DJJ. § 985.19(1)(a).

- **Speedy Trial Time Tolls**

Upon the filing of a motion by the child's counsel alleging incompetency to proceed, or on the court's order finding the child incompetent to proceed, a speedy trial shall be tolled until a subsequent order that the child is competent to proceed. Motions by the state or by the court itself that the child is incompetent to proceed may toll speedy trial pursuant to Rule 8.090(e). Rule 8.095(a)(9). See General Topics for more information about speedy trials.

- **Set the Hearing**

The hearing shall be set for a time determined by the court. Rule 8.095(a)(2). The hearing date must allow time for experts to examine and evaluate the child's mental condition.

- **Detention is Permissible**

The court may order the child detained pending examination; this in no way adds any detention power not provided by statute or case law. Rule 8.095(c)(2).

## **Competency Determination**

- **Basis for a Determination**

All determinations of competency shall be based on the evaluation of the child's mental condition made by no less than 2 and no more than 3 experts appointed by the court, § 985.19(1)(b), though other competent evidence may be introduced at the hearing. Rule 8.095(c)(1). The appointment of experts by the court does not preclude the child or the state from calling other expert witnesses to testify. Rule 8.095(c)(1).

- **Evaluation by Experts**

The evaluations by the court-appointed experts must include the basis for any determination and a recommendation as to whether residential or nonresidential treatment or training is required. § 985.19(1)(b). The evaluators must determine whether the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the child has a rational and factual understanding of the present proceedings. Rule 8.095(d)(1)(A). The evaluation must address the child's capacity to:

- Appreciate the charges or allegations against the child;

- Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable;
  - Understand the adversarial nature of the legal process;
  - Disclose to counsel facts pertinent to the proceedings at issue;
  - Display appropriate courtroom behavior; and
  - Testify relevantly. § 985.19(1)(f)(1)-(6).
- **Expert Report**  
 If the experts recommend that the child is incompetent to proceed, they must include in their report any recommended treatment for the child to gain competence to proceed. Rule 8.095(d)(2). In considering issues related to treatment, the experts must report on the following:
    - The mental illness, mental retardation, or mental age causing incompetence;
    - The treatment or education appropriate for the mental illness or mental retardation of the child and an explanation of each of the possible treatment or education alternatives, in order of recommendation;
    - The availability of acceptable treatment or education. If treatment or education is available in the community, the experts must state that in the report.
    - The likelihood of the child attaining competence under the treatment or education recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the child will attain competence to proceed in the foreseeable future; and
    - Whether the child meets the criteria for involuntary hospitalization or involuntary admissions to residential services under chapter 985, Florida Statutes. Rule 8.095(d)(2)(A)-(E).
- **“Mental Retardation” or “Autism”**  
 If the motion alleges “mental retardation” or “autism,” the court shall order the Agency for Persons with Disabilities to examine the child to determine whether the child meets the definition of “mental retardation” or “autism,” and, if so, whether the child is competent to proceed with the delinquency proceedings. § 985.19(1)(e).
- **If Found Competent**  
 If the child is competent, enter an order finding the child competent, and proceed accordingly. Rule 8.095(a)(3).
- **If Found Incompetent**  
 If the court finds the child incompetent to proceed, the child must be adjudicated incompetent to proceed. The court must then determine the appropriate treatment or training for the child. Rule 8.095(a)(4).

## **Confinement Assessment**

- **Commitment to DCF**

A child who is adjudicated incompetent to proceed and who has committed a delinquent act or violation of the law, either of which would be a felony if committed by an adult, must be committed to the Department of Children and Families for treatment or training. § 985.19(2).

- **When Commitment to DCF is Impermissible**

A child who is adjudicated incompetent to proceed and who has committed a delinquent act or violation of the law, either of which would be considered a misdemeanor if committed by an adult, may not be committed to the Department of Children and Families for restoration-of-competency treatment or training services. § 985.19(2).

A child who is adjudicated incompetent to proceed because of age or immaturity, or for any reason other than for mental illness or retardation or autism, must not be committed to the Department of Children and Families for restoration-of-competency treatment or training services. § 985.29(2).

- **Secure Placement Determination**

If the child is adjudicated incompetent to proceed because of mental illness, retardation, or autism, the court must determine whether the child meets the criteria for secure placement. § 985.19(3). The criterion for secure placement is a finding based on clear and convincing evidence that the child is mentally ill, mentally retarded, or has autism, and because of that:

- The child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services and without treatment or training, the child is likely to either suffer from neglect or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or
- There is a substantial likelihood that, in the near future, the child will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm;
- And all available less restrictive alternatives, including treatment or training in community residential facilities or community settings which would offer an opportunity for improvement of the child's condition, are inappropriate. § 985.19(3).

- **Where Detention Criteria are Met**

A child adjudicated incompetent to proceed because of mental illness, retardation, or autism and who meets the detention criteria in § 985.19(3) must be committed to the Department of Children and Families. Rule 8.095(a)(6). A child adjudicated incompetent because of mental retardation may be ordered into a program designated by the Department of Children and Families for retarded children. Rule 8.095(a)(6)(A). A child adjudicated incompetent because of mental illness may be ordered into a program designated by the Department of Children and Families for mentally ill children. Rule 8.095(a)(6)(B).

- **Where Detention Criteria are not Met**

A child adjudicated incompetent to proceed because of mental illness, retardation, or autism and who does not meet the detention criteria shall be ordered into the Department of Children and Families care and provided appropriate treatment and training in the community. Rule 8.095(a)(8). All court-ordered treatment must be in the least restrictive setting consistent with public safety. Rule 8.095(a)(8).

- **Report by Service Provider**

The service provider who is providing treatment or education to the child must file with the court a written report not later than 6 months after the date of commitment, or at the end of any period of extended training or education, and at any time the Department of Children and Families determines the child has attained competency, or sooner if so ordered by the court. § 985.19(4)(e).

- **Retention of Jurisdiction**

The court shall retain jurisdiction of a child adjudicated incompetent to proceed for up to 2 years after the date of the order of incompetency, with reviews at least every 6 months to determine competency. § 985.19(5)(a). If the court determines that the child has not attained competency, the court shall order appropriate nondelinquent hospitalization or treatment in conformity with Rule 8.095 and the applicable sections of Chapter 985, Florida Statutes. Rule 8.095(a)(5)(A). If the court at any time determines that the child will never attain competency, the court may dismiss the delinquency petition or petition alleging violation of juvenile probation. Rule 8.095(a)(7)(A). If necessary, the court may order proceedings under Chapter 393, Florida Statutes (Developmental Disabilities) or Chapter 394, Florida Statutes (Florida Mental Health Act or The Baker Act) be instituted not less than 60 days before the dismissal of the delinquency petition. Rule 8.085(a)(7)(C).

- **Dismissal of Delinquency Petition**

If, at the end of the two-year period, the child has not attained competency and there is no evidence that he or she will attain competency within one year, the court must dismiss the delinquency petition. Rule 8.095(a)(7)(B).

### **Requirements for a Written Order of Incompetency**

- **The order of incompetency must include:**

- **Name and address of the child.** State the name and address of the child or, if unknown, designate the child by a name or description that can identify the child with reasonable certainty.
- **Written findings.** Include specific written findings as to the nature of the incompetency and whether the child requires secure or nonsecure treatment or training environments. § 985.19(1)(c).
- **Treatment ordered.** Include the treatment, training, or education ordered for the child and the findings such is based on.
- **Date of next hearing.** Include in the order the date of the follow-up hearing to assess whether the child has attained competence.

## CORRECTION OF ORDERS HEARING AT A GLANCE

<b>RELEVANT STATUTES &amp; RULES</b>	<p>Florida Statutes §§ 27.52; 90.6063; 985.033; 985.035; 985.036</p> <p>Fla. R. Gen. Prac. &amp; Jud. Admin., Rule 2.560, Rule 2.545(d)</p> <p>Rules of Juvenile Procedure 8.003; 8.030; 8.031; 8.100; 8.135; 8.165; 8.270</p> <p>Rules of Appellate Procedure 9.140; 9.145</p> <p>Rules for Certification and Regulation of Court Interpreters 14.100</p>
<b>PURPOSE OF HEARING</b>	The purpose of the correction of orders hearing is to determine whether the court has made an error in the disposition or commitment order that must be corrected.
<b>RULES OF EVIDENCE</b>	The same rules of evidence used in evidentiary hearings.
<b>RIGHT TO COUNSEL</b>	The court must advise the child of his or her right to counsel and determine whether the right is understood. § 985.033; Rule 8.165(b). The court must also determine whether the child and the child's parents are indigent. If so, the court must advise of the right to have counsel appointed in accordance with § 27.52. If counsel is waived, the court must determine whether the waiver is knowing, intelligent, and voluntary. § 985.033; Rule 8.165.



## **CORRECTION OF ORDERS HEARING BENCHCARD**

### **Generally**

- Determine whether an interpreter is needed to facilitate communications at the hearing.
- Verify that the proceeding is being recorded or transcribed.
- Explain the purpose of the correction of orders hearing. Let the child know that the purpose of the hearing is to determine whether the court has made an error in the disposition or commitment order that must be corrected.
- Have all the parties identify themselves for the record with full name and current address. Advise the parties that the court will use the addresses provided for notice purposes unless otherwise notified in writing.
- Determine whether the parents/legal guardians are present or absent.
- If parents/legal guardians are absent, request that DJJ give a thorough description of the steps taken to locate the parents and provide them notice of the hearing.
- Determine whether the victim and/or the victim's parents, guardian, lawful representative, or next of kin has been informed of the date and time of the hearing.
- Determine whether the child, or his or her family, is involved in other court proceedings and if a Notice of Related Cases form as required by Rule 2.545(d) and Rule 8.003 is, or should be, filed in the case. Consider how to consolidate or coordinate any related cases.

### **Advise of Rights**

- Determine whether the child is represented by counsel.
- If the child appears without counsel, advise the child of the right to counsel and determine whether the right is understood.
- If the child and his or her parents are indigent, advise the child that he or she has the right to have counsel appointed.
- The court shall appoint counsel unless waived by the child in writing. Waiver of counsel can only occur after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.
- If the child waives counsel, determine if the waiver is knowing, intelligent, and voluntary.

### **Correction Hearing Procedure**

- Once the court receives a motion for correction, the court must determine

whether it can resolve the motion as a matter of law without a hearing.

- If the motion cannot be resolved as a matter of law without a hearing, the court has ten days from the filing of the motion to hold an initial hearing, with notice to all parties, to either rule on the motion or determine if an evidentiary hearing is needed.
- If an evidentiary hearing is needed, it must be set no more than 10 days from the date of the initial hearing.
- The court is required to file an order ruling on the motion within 30 days of the date of the initial filing. If no order is filed within the 30 days, the motion shall be deemed denied.

### **Correction Determination**

- The court should examine the records of the hearing that provide the basis for the order in question, compare the hearing records with the written order, take testimony as necessary, and determine whether there was any error in the order.
- Explain to the child what the determination means and how the court arrived at that determination in clear, simple language. Verify that the child knows what is required of him or her and the consequences of failing to act as required.

### **Requirements for a Corrected Order**

- The order must be in writing and clearly marked as an **amended** order.
- State the name and age of the child.
- Noting all amendments and corrections, state the disposition of each count specifying the charge, the degree of offense, and the maximum penalty defined by statute.
- If counsel was waived, make a finding that the waiver was knowing, intelligent, and voluntary.
- State the date and time when issued and the county and court where issued.
- State whether the court retains jurisdiction over discharge.

## CORRECTION OF ORDERS HEARING OUTLINE

### Generally

- **Interpreter Determination**

Determine whether an interpreter is needed to facilitate communications in the hearing process. Check for prior notification of a need for services. If an interpreter has already been selected and is available at the proceeding, verify that the interpreter can readily communicate with the person in need of services and can repeat and translate communication easily. § 90.6063(6); Rule 2.560. If an interpreter has not been pre-selected, work with court administration to provide a certified or duly qualified interpreter. § 90.6063(3)(b); Rule 14.100. If no qualified interpreter is available, the court may appoint an interpreter not qualified or certified if the court finds that good cause exists for the appointment of a non-qualified interpreter, such as burdensome delay or other unusual circumstance, and the proposed interpreter is competent to interpret. Rule 2.560(e)(3). Verify that the child knows that he or she is allowed to object to the proposed appointment of an interpreter not qualified or certified. See General Topics for more information on interpreters.

- **Recording**

A record of all hearings must be made by an official court reporter, a court-approved stenographer, or a recording device. Rule 8.100(f).

- **Purpose**

The purpose of the correction hearing is to determine whether there is an error in the disposition or commitment order that must be corrected.

- **Identify Those Present**

Identify those present and their relationship to the case. The parties should identify themselves for the record. Delinquency hearings are open to the public unless the court finds that it is in the child's best interest to restrict those in attendance. § 985.035.

- **Notice Assessment**

If the parents or guardians have been identified and are absent from the proceeding, determine the steps taken to locate and provide notice of the hearing. The nonattendance by a parent or guardian may require the continuance of the correction hearing. If the parents or guardians are subject to paying restitution, community service, or other parental sanctions, then the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing if a

party can show good cause for the continuance. Rule 8.100(e).

Victims and their family members or lawful representatives have a right to be informed of, to be present during, and to be heard when relevant at all crucial stages of proceedings involving the accused juvenile. § 985.036.

- **Other Proceedings Determination**

- Determine whether the child is involved in other court proceedings.**

- Determine whether the child is involved in other court proceedings and if a Notice of Related Cases form as required by Rule 2.545(d) and Rule 8.003 is, or should be, filed in the case. Consider how to consolidate or coordinate the related cases.

## **Advise of Rights**

- **Right to Counsel**

- Determine whether the child is represented by counsel. If the child appears without counsel, advise the child of the right to counsel. Section 985.033 requires that the child must be advised of the right to counsel at all stages of any delinquency court proceeding.

Determine whether the right to counsel is understood. The court must inquire whether the child understands this right. Rule 8.165(b)(2). No waiver may be accepted if it appears that the child is unable to make an intelligent and understanding decision due to mental condition, age, education, experience, the nature of the case, or other factors. Rule 8.165(b)(4).

Determine whether the child and the child's parents or guardians may be considered indigent. If the clerk of court has not made a determination of indigent status at or before the time of the hearing, the court must make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender. § 27.52(3). A person seeking an appointed counsel based on an inability to pay must apply to the clerk of court for indigent status using the standard application form. § 27.52(1).

If indigent, advise of the right to have counsel appointed. The child must be advised that, if indigent, he or she has the right to have counsel appointed by the court in accordance with §§ 27.52 and 985.033(4).

If counsel is waived, determine if the waiver is knowing, intelligent, and voluntary. Section 985.033(2) requires that a child must be represented by legal counsel at all stages of all juvenile court proceedings unless the

right is knowingly, freely, and intelligently waived by the child. The court must inquire to determine whether the right is knowingly, freely, and intelligently waived by the child; waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the right to counsel and consequences of waiving counsel. Rule 8.165(a). Waiver of counsel must be on the record. Rule 8.165(a). If a waiver of counsel is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. Rule 8.165(b)(5). If an attorney-client relationship is discontinued, the court must advise the child of the right to have new counsel retained or appointed for the remainder of the proceedings. § 985.033(1).

- **Right to Communicate**

Unlike the detention hearing, the child has no explicit right to communicate with an absent parent or guardian. However, some courts have attempted to maintain flexibility when a child desires the presence of an absent parent or wishes to communicate with an absent parent. These practices are not codified in statute or rule; as such, they are simply promising practices the court may engage in when a child desires to communicate with an absent parent or guardian at a hearing where there is no explicit right to communicate. Promising practices that allow the child an opportunity to communicate with an absent parent include:

- Providing a telephone to facilitate communication if a parent is available telephonically;
- Delaying the hearing for a later time on the same day to allow a parent time to attend the hearing, if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work; or
- Continuing the hearing to another day to allow the parent an opportunity to attend the hearing if a parent cannot attend the hearing due to an unchangeable schedule obligation such as work.

## **Correction Hearing Procedure**

- **Motion before appeal**

During the time allowed for the filing of a notice of appeal (pursuant to Florida Rules of Appellate Procedure), a child, the State, or the Department may file a motion to correct an error in a disposition or commitment order. Rule 8.135(b)(1). The child must file within 30 days of rendition of the written disposition order or commitment order. Rule 9.140(b)(3). The State must file within 15 days of rendition of the written order to be reviewed. Rule 9.140(c)(2). If the State is filing a motion to correct a pre-adjudication order, the notice of appeal must be filed within 15 days of the rendition of the order and must be before commencement of the adjudicatory hearing. Rule 9.145(c)(2).

- **Motion pending appeal**

A child or the State may file a motion to correct while an appeal is pending if it is done before the party's first brief is served. Rule 8.135(b)(2). Unless the motion explicitly states otherwise, trial counsel will represent the moving party. Rule 8.135(b)(2)(A). If the State is the moving party, the child will be represented by the trial counsel unless the court is otherwise notified. Rule 8.135(b)(2)(A).

The State may file only if the correction of the error would benefit the child or to correct a scrivener's error. Rule 8.135(b). *In J.D. v. State*, 849 So. 2d 458 (Fla. 4th DCA 2003), the court indicated that a scrivener's error referred to "clerical or ministerial errors in a criminal case that occur in the written sentence, judgment, or order of probation or restitution."

- **Determine whether Hearing is Necessary; Hearing Timeframe**

Once the court receives a motion for correction, the court must determine whether it can resolve the motion as a matter of law without a hearing. Rule 8.135(b)(1)(B). If a hearing is necessary, the court will have 10 days from the initial filing to hold an initial hearing, with notice to all parties. Rule 8.135(b)(1)(B).

The court is required to file an order ruling on the motion within 30 days from the date of the initial filing. Rule 8.135(b)(1)(B). The motion will be deemed denied if no order is filed within 30 days. Rule 8.135(b)(1)(B).

## **Correction Determination**

The court should examine the records of the hearing that provide the basis for the order in question, compare the hearing records with the written order, take testimony as necessary, and determine whether there was any error.

Explain to the child what the determination means and how the court arrived at that determination in clear, simple language. Verify that the child knows what is required of him or her and the consequences of failing to act as required.

## **Requirements for a Corrected Order**

- **The court is required to file a written order ruling on the motion within 30 days from the date of the initial filing. Rule 8.135(b)(1)(B).**
  - Very clearly mark "**Amended**" at the top of the new order. In

this manner, affected parties will know that the order is a corrected order.

- **Name and age.** State the name and age of the child on the order.
- **Date and time.** Specify the date and time when the corrected order was issued and the county and court where issued. Finally, include those elements as required by the type of order being corrected.

## GENERAL TOPICS

### Appeals

#### Generally

Sections 985.534-985.536 govern the procedure for delinquency appeals. There are two procedures that the trial court may oversee: motion for rehearing and motion for extraordinary relief. Rules 8.130 and 8.140. This section will discuss these two procedures and provide an overview of the trial court's responsibilities when a party appeals to the appellate level.

#### Motion for Rehearing

After the court has entered a ruling on a pretrial motion, order of adjudication, or order withholding adjudication, any party may move for a rehearing. Rule 8.130(a). The grounds for such a motion include:

- That the trial court erred in the decision of any matter of law arising during the hearing.
- That a party did not receive a fair and impartial hearing.
- That any party required to be present at the hearing was not present.
- That there exists new and material evidence which, if introduced at the hearing, would probably have changed the court's decision and could not with reasonable diligence have been discovered before and produced at the hearing.
- That the court is without jurisdiction of the proceeding.
- That the judgment is contrary to the law and evidence. Rule 8.130(a)(1)-(6).

A motion for rehearing must be made within 10 days of the entry of the order being challenged and can be made as soon as the court announces its judgment. Rule 8.130(b)(1). If the motion is in writing, it must be "served as provided in these rules for service of other pleadings." Rule 8.130(b)(2).

The court may rule upon the motion immediately. Rule 8.130(b)(1). If the court grants the motion, the court may modify or vacate the order in all or in part and allow additional proceedings as it deems just. Rule 8.130(c)(1). The court may enter a new judgment and can keep the child in detention pending further proceedings. Rule 8.130(c)(1).

The court may, on its own initiative, vacate or modify any order, as long as it is done within 10 days of the entry of the order. Rule 8.130(c)(2).

The motion for rehearing will toll the time for the taking of an appeal. Rule 8.130(b)(3).



### **Motion for Extraordinary Relief**

The court may, on motion and “upon such terms as are just,” provide a party or party’s legal representative extraordinary relief from an order, judgment, or proceeding. Rule 8.140(a). The court may base such relief on:

- Mistake, inadvertence, surprise, or excusable neglect.
- Newly discovered evidence which by due diligence could not have been discovered in time to move for rehearing.
- Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of any other party.
- That the order of judgment is void. Rule 8.140(a)(1)-(4).

The motion must be made within a reasonable time – for the first three bases, not more than one year after the judgment, order, or proceeding was taken. Rule 8.140(b).

### **Appeal to the Appellate Court**

The child or his or her legal parent or guardian may file an appeal at any time between rendition of the final judgment and 30 days following rendition of a written order imposing sentence. Rule 9.140(b)(3). The child may appeal from a judgment based on a no contest plea if the child expressly reserved the right to appeal a dispositive order of the court, identifying with particularity the point of law being reserved. *M.N. v. State*, 16 So. 3d 280 (Fla. 2d DCA 2009). The failure to preserve an issue for review after the entry of a plea is not a jurisdictional bar but rather a limitation on the issues that can be addressed on appeal. *Leonard v. State*, So. 760 2d 114 (Fla. 2000). An issue is not properly preserved for appeal unless there is an express reservation of the right to appeal a particular point of law and the court determines that its prior order on that point was dispositive. *T.A.R. v. State*, 2 So. 3d 993 (Fla. 2d DCA 2008). The judge must sign an order appointing the Office of the Public Defender in order for the appellate process to proceed unless the child retains private counsel to complete the entire process.

The state may file an appeal on a limited number of grounds, Rule 9.145(c), within 15 days of the rendition of the order to be reviewed. Rule 9.140(c)(3).

The taking of an appeal does not operate as supersedeas unless pursuant to a court order. § 985.534(3).

An appeal by the state on an order from a pre-adjudicatory hearing will stay the case until the appeal is determined. § 985.535(2). If the appellate court determines that the subject matter of the order would materially assist the state in proving its case against another child (not the child in the current case), the appellate court can stay that child’s case until the current appeal is determined. § 985.535(2).

While an appeal is pending, the trial court has discretion over whether to release the child or retain him or her in custody. § 985.535(2).

When the state appeals from a ruling on a question of law adverse to the state, the appellate court must decide the question. § 985.536(2).

## Authority of Court over Parents

### **Generally**

Parents/guardians are deemed responsible for providing for their children and deterring them from committing delinquent acts. § 985.02(6). If the child does commit a delinquent act, the emotional, legal, and financial responsibilities of the parents or guardians with regard to the care, custody, and support of the child continue while he or she is under the care of DJJ. § 985.02(6).

### **Nonattendance by a Parent or Guardian**

The parents are required to attend hearings if they have been served and face the possibility of contempt if they fail to obey the summons. § 985.319(7). If a diligent search was made and the parents could not be located, an Affidavit of Diligent Search must be filed. Fla. R. Juv. Pro. Form 8.968. The form lists out several search methods that must be performed before filing, including attempting to:

- Telephone the parents;
- Search the telephone directory for information;
- Send a certified letter to the last known address, return receipt requested;
- Personally, visit the last known address;
- Inquire of all of the relatives any information about the parents' whereabouts or current addresses; and
- Inquire of federal agencies and mental and physical health facilities as to the possible location of the parents.

Only after these possibilities are exhausted may the form be filed with the court.

As long as diligent efforts were made to locate and serve the parents, their nonattendance does not bar a detention or arraignment hearing from taking place. Rules 8.010 and 8.015. Further, if the identity or location of the parents is unknown after the diligent search, the court must appoint a Guardian ad Litem for the child, if appropriate. § 985.319(7).

The nonattendance by a parent or guardian may require the continuance of an adjudicatory, disposition, restitution, correction of orders, violation of probation, or contempt hearing. If the court orders the child to pay monetary restitution, it is done through a promissory note cosigned by the parents or guardians. § 985.437(2). Additionally, the state may seek restitution or community service by the child's parents; a separate petition called a "Petition for Parental Sanctions" must be filed with the court, and the parents or guardians must be served. Rules 8.030 and 8.031. If either of these situations has occurred, a lack of service or a failure to appear may be grounds for a continuance of the hearing if a party can show good cause for the continuance. Rule 8.100(e).

### **Costs of Representation**

Parents or guardians are responsible for paying costs associated with the representation of the child. § 985.511. If the child and the parents are indigent, the court shall appoint representation. § 985.033(1). If the parents and child are not indigent but refuse to employ counsel, the court shall appoint counsel until counsel is provided. § 985.033(3). Costs are imposed as provided by §§ 27.52 and 938.29.

### **Parenting Skills Course**

The court may order the parent or legal guardian of a child adjudicated dependent, a child in need of services, or a child adjudicated delinquent to attend a parenting skills course, accept counseling, or receive other assistance from any other available agency. § 985.512. The parents or guardians may also be ordered to participate in such counseling as deemed necessary for the rehabilitation of the child. § 985.513(2).

### **Restitution or Community Service**

The court, having jurisdiction over a child adjudicated delinquent, may (by an order stating the facts upon which a determination was made):

- Order the child's parent or guardian, along with the child, to render community service in a public service program or to participate in a community works project. The court may order the parents or guardians to perform community service if the court finds that they did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.
- Order the child's parent or guardian to pay restitution in money or in kind for any damage or loss caused by the child's offense. Furthermore, the parent may be responsible for any restitution ordered against the child. The court may retain jurisdiction over the child and parents until the restitution order is satisfied or the court orders otherwise. § 985.513(1)(a)-(b).
- The restitution must be causally connected, directly or indirectly, to the offense. *J.O.S. v. State*, 689 So. 2d 1061 (Fla. 1997).
- The amount of restitution ordered must be a reasonable amount. § 985.437(2).
- The defendant is entitled to a restitution hearing if he or she disputes the amount. *Cozzens v. State*, 197 So. 3d 1080 (Fla. 2d DCA 2015). The State must prove the amount by a preponderance of the evidence.
- A restitution hearing must be set within 60 days of sentencing. See § 775.089.
- The Court may order restitution and reserve on the amount within 60 days of sentencing, which would allow for a determination of the amount after the 60 day period.
- The Court may impose restitution as a lien.

- A court does not have the authority to hear a restitution hearing if there is an appeal pending.
- A court may not order restitution if there is no plea/delinquency ordered. A court errs in ordering restitution for a child in a diversion program if the child did not stipulate or agree to reimburse the victim as part of the diversion program. *J.C. v. State*, 159 So. 3d 969 (Fla. 2d DCA 2015).

### **Fees**

When a child is placed into supervised release detention, probation, or another supervision status pursuant to a court order following a detention hearing or adjudicatory hearing, regardless of adjudication, the parents must pay fees as provided in § 985.039, § 985.514(1)-(2). When the court orders any child to be prosecuted as an adult, the parents must pay fees as provided in § 985.039 for the child's commitment to or supervision by the DJJ, § 985.514(3), except where the fee is waived or reduced due to significant financial hardship or a finding that the parent was a victim of the child's unlawful behavior and is cooperating with the authorities.

§ 985.039(3)-(4).

If the court makes a finding of indigency and significant financial hardship as to the parent of any child, the court shall waive the fee or reduce it to an amount deemed appropriate. § 985.039(3).

With regard to a child who reaches 18 while under the supervision or care of the department, the court may, upon proper motion of any party, hold a hearing as to whether any party should be further obligated to pay any fee associated with the cost of the supervision or care of such child. § 985.039(6).

## **Child Adjudicated Not Guilty by Reason of Insanity**

### **Advise the Court**

If the child named in the petition intends to plead insanity as a defense, the child has to advise the court in writing not less than 10 days before the adjudicatory hearing and must provide the court with a statement of particulars showing as nearly as possible the nature of the insanity expected to be proved and the names and addresses of witnesses expected to prove it. Rule 8.095(b)(1). Once filed, the court may order the child to be examined in accordance with the procedures in Rule 8.095. Rule 8.095(b)(1).

The court, upon a showing of good cause and in its discretion, may waive these requirements and permit the introduction of the defense or may continue the hearing for the purposes of an examination in accordance with Rule 8.095. Rule 8.095(b)(2). A continuance will toll speedy trial and the limitation on detention pending adjudication. Rule 8.095(b)(2).

### **Not Guilty by Reason of Insanity**

If the child is found not guilty by reason of insanity, the court will enter such a finding in its judgment. Rule 8.095(e)(1). After a ruling of not guilty by reason of insanity, the court will conduct a hearing to determine whether the child presently meets the statutory criteria for involuntary commitment to a residential psychiatric facility. Rule 8.095(e)(2). If the requirements are met, the court must commit the child to the Department of Children and Families for immediate placement in a residential psychiatric facility. Rule 8.095(e)(2)(A). If the requirements have not been established, the court will order the child to receive recommended and appropriate treatment at an outpatient facility. Rule 8.095(e)(2)(B). If the court determines that treatment is not needed, the court will discharge the child. Rule 8.095(e)(2)(C).

### **Treatment**

Commitment to a residential psychiatric facility is governed by Chapters 985 or 394, Florida Statutes, except that requests for discharge or continued involuntary commitment must be directed at the court that committed the child. Rule 8.095(e)(2)(D).

If a child is not committed to a residential psychiatric facility and has been ordered to receive treatment at an outpatient facility, and it appears during the course of the ordered treatment,

- That treatment is not being provided or that the child now meets the criteria for hospitalization, the court must conduct a hearing pursuant to subdivision (e)(2) of this rule; or
- That the child no longer requires treatment at an outpatient facility or service, the court must enter an order discharging the child. Rule 8.095(e)(2)(E)(i)-(ii).

**Review**

During the time the child is receiving treatment, either by hospitalization or through an outpatient facility, any party may request the court to conduct a hearing to determine the nature, quality, and need for continued treatment. The hearing must be conducted like the initial involuntary commitment hearing. Rule 8.095(e)(2)(F).

No later than 30 days before reaching age 19, a child still under the supervision of the court under this rule must be afforded a hearing. At the hearing, a determination must be made as to whether the child needs continued hospitalization or treatment. If the court determines that continued care is appropriate, involuntary placement proceedings should be initiated under Chapter 394, Florida Statutes. If the court determines further care is unnecessary, the child should be discharged. Rule 8.095(e)(2)(G).

## Commitments to DJJ

### Commitment Process

The commitment process begins when a child is brought for intake to the DJJ. § 985.14(1). The child is assigned to a juvenile probation officer (JPO) that will assess the child's needs and risks and determine the most appropriate treatment plan and setting according to the child's needs and risks.

§ 985.14(1). The JPO will prepare a predisposition report, which is presented to the court at the detention hearing § 985.14(3)(a).

The court uses the predisposition report, along with other materials and evidence, in the pre-sentencing hearings. If the child is adjudicated delinquent, the court will review DJJ's recommendations for commitment and, by an order stating the facts upon which the determination was made, order the child into a specified commitment program or level of commitment. § 985.441(1). DJJ has four restrictiveness levels depending on the program needs and required supervision of the child, as defined in § 985.03(44)(a)-(d): (a) minimum-risk nonresidential, (b) nonsecure residential, (c) high-risk residential, and (d) maximum-risk residential.

A child on probation for a misdemeanor may not be committed to a restrictiveness level other than minimum-risk nonresidential for a misdemeanor offense or a technical probation violation. However, the child could be committed to a nonsecure residential placement if the child had previously been adjudicated or had adjudication withheld for a felony. The child may also be committed to a nonsecure residential placement if the child had previously been adjudicated or had adjudication withheld for three or more misdemeanors within the preceding 18 months. § 985.441(2)(a),(b).

### Restrictiveness Levels

- **Minimum-risk nonresidential.** Programs or program models work with the child who remains in the community and participates at least 5 days per week in a day treatment program. A child assessed and classified for a minimum-risk nonresidential program represents a minimum risk to himself/herself and to public safety and does not require placement and services in residential settings. A child in this level has full access to and resides in the community. However, a child who was found to have committed delinquent acts that involved firearms, that were sexual offenses, or that would have been life felonies or first-degree felonies if committed by an adult may not be committed to a program at this level.
- **Nonsecure residential.** Programs at this commitment level are residential but may allow the child to have unsupervised access to the community. Facilities are either environmentally secure, staff secure, or hardware-secure with walls, fencing, or locking doors. Facilities at this commitment



level shall provide 24-hour awake supervision, custody, care, and treatment of residents. A child assessed and classified for placement in programs at this commitment level represents a low or moderate risk to public safety and requires close supervision. The staff at a facility at this commitment level may seclude a child who is a physical threat to him or herself or others. Mechanical restraint may also be used when necessary.

- **High-risk residential.** At this commitment level, programs are residential and do not allow the child to have access to the community, except that temporary release providing community access for up to 72 continuous hours may be approved by a court for a child who has made successful progress in his or her program in order for him or her to attend a family emergency or, during the final 60 days of his or her placement, to visit his or her home, enroll in school or a vocational program, complete a job interview, or participate in a community service project. High-risk residential facilities are hardware-secure with perimeter fencing and locking doors. Facilities provide 24-hour awake supervision, custody, care, and treatment of residents. A child assessed and classified for high-risk residential placement requires close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs placement in programs at lower commitment levels. The staff at a facility at this commitment level may seclude a child who is a physical threat to him or herself or to others. Mechanical restraint may also be used when necessary. The facility may provide for single-cell occupancy.
- **Maximum-risk residential.** Programs at this commitment level include juvenile correctional facilities and juvenile prisons. The programs are long-term residential and do not allow the child to have access to the community. Facilities are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Facilities provide 24-hour awake supervision, custody, care, and treatment of residents. The staff at a facility at this commitment level may seclude a child who is a physical threat to him or herself or to others. Mechanical restraint may also be used when necessary. The facility must provide for single-cell occupancy, except that children may be housed together during prerelease transition. A child assessed and classified for this level of placement requires close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.

## **Conditional Release and Post-Commitment Probation**

### **Conditional Release**

Conditional release is “the care, treatment, help, and supervision provided juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism.” § 985.46(1)(a).

Commitment programs should include rehabilitative efforts for preparing the child for a successful release into the community, § 985.46(2)(a), with conditional release transition planning occurring as early in the commitment process as possible. § 985.46(2)(b).

Conditional release services are provided by DJJ and can include:

- Assessing a child placed into a residential commitment program to determine the need for conditional release services upon release from the program;
- Supervising the child when he or she is released into the community from a residential commitment facility;
- Providing counseling and other services as necessary for the child’s family; and
- Assisting the family in their preparations for the return of the child. § 985.46(3).

Participation in the educational program by students of compulsory school attendance age is mandatory for a child on conditional release status. § 985.46(5). A child of non-compulsory school attendance age who has not received his or her high school diploma or its equivalent must participate in the education program. § 985.46(5). A child who has received a high school diploma or its equivalent and is not employed must, while in the conditional release program, participate in:

- Workforce development or other career or technical education, or
- Attend community college or a university. § 985.46(5).

### **Post-Commitment Probation**

The court may order a child adjudicated delinquent to be placed into a post-commitment probation program. § 985.435(1). The child must be placed into a program supervised by an authorized agent of DJJ or by any other agency or person specifically authorized and appointed by the court. § 985.435(1). The program may be in the child’s home, the home of a relative, or another suitable place under the conditions specified by the court. § 985.435(1).

The probation program must include a penalty component. § 985.435(2).

Common penalty components of probation programs include:

- Restitution in money or in kind;
- Community service;

- A curfew;
- Revocation or suspension of the child's driver's license, or
- Other nonresidential punishment appropriate to the offense. § 985.435(2)(a)-(e).

The probation program must also include a rehabilitation component. § 985.435(3). Common rehabilitation components include participation in a school or similar educational program or participation in a substance abuse program. § 985.435(3). Participation in the educational program by a child of compulsory school attendance age is mandatory for a child on post-commitment probation status. § 985.46(5). The child's consent is not necessary for the court to order him or her to participate in the specified rehabilitation component. § 985.435(3). The court may also order random testing for the purposes of detecting and monitoring the use of alcohol or controlled substances. § 985.435(3).

A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new violations of law. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation must be detailed in the disposition order. § 985.435(4).

If the court orders post-commitment probation, the period of probation must be consistent with any treatment or rehabilitation needs identified for the child. § 985.435(5). If the court orders special conditions of probation, they must be pronounced orally at disposition or statutorily authorized. *J.W.J. v. State*, 994 So. 2d 1223 (Fla. 1st DCA 2008). Additionally, the probation period may not exceed the term for which a sentence could be imposed if the child were committed for the offense. § 985.435(5). However, there is an exception: if the offense is a misdemeanor of the second degree or equivalent to a second-degree misdemeanor, the probation period may be for a period of no more than six months. § 985.435(5). If the court orders post-commitment probation, specify in the order the length of the probation. *S.T. v. State*, 8 So. 3d 1153 (Fla. 1st DCA 2009).

The court may conduct judicial review hearings for a child placed on probation to foster accountability and determine that the child is complying with the probation requirements. § 985.435(7). The court may also allow for early termination of the probation for a child who has substantially complied with the terms of the probation. § 985.435(7).

## Confidentiality

### Generally

With a few exceptions, all information obtained in a delinquency proceeding is confidential, so long as the information was obtained in the discharge of an official duty by any judge, employee of the court, authorized agent of DJJ, the Parole Commission, the Department of Corrections, the juvenile justice circuit boards, law enforcement officer, or licensed professional or licensed community agency representative who is participating in the assessment or treatment of a juvenile. § 985.04(1). Any information so obtained may be disclosed only to the authorized personnel of the court, the DJJ and its designees, the Department of Corrections, the Parole Commission, law enforcement agents, school superintendents and their designees, licensed professionals or professional agency representatives participating in the assessment or treatment of the juvenile, or any other person entitled under this chapter to receive access to the information. § 985.04(1). The court may also, by order, allow others not listed access to information. § 985.04(1).

### Exceptions

- **The name, photograph, address, and crime or arrest report** of a child is not considered confidential and exempt from §119.07(1) solely because of the child's age if the child was:
  - Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
  - Charged with a violation of law which, if committed by an adult, would be a felony;
  - Found to have committed an offense which, if committed by an adult, would be a felony; or
  - Transferred to adult court pursuant to part X of this chapter. § 985.04(2)(a)-(d).
- **The victim of the offense may receive a copy of the juvenile offense report;** however, such information must not be revealed to any outside party, except as reasonably necessary to pursue legal remedies. § 985.04(3).
- Records maintained by the department, including copies of records maintained by the court, which pertain to a child found to have committed a delinquent act which, if committed by an adult, would be a crime specified in §435.04, shall be sealed by the court for use only in meeting the screening requirements for personnel in §402.3055 or under departmental rule. The court may punish by contempt any person who releases or uses the records for any unauthorized purpose. § 985.04(6)(a).
- **Sexual offender and predator registration information** is a public record as provided by law. § 985.04(6)(b).

- **Records in the custody of DJJ regarding children** may be inspected only on the order of the Secretary of Juvenile Justice or his or her authorized agent, by people who have sufficient reason and on such conditions for their use and disposition as the Secretary or his or her authorized agent deems proper. § 985.04(7)(a). The information may only be disclosed to other employees of the department who have a need for the information to perform their official duties, to other people as authorized by the department's rules, and on request to the Department of Corrections. § 985.04(7)(a).

## **Cost of Court, Care, and Supervision**

### **Generally**

When any child is placed into supervised release detention, probation, or other supervision status with DJJ or is committed to the minimum-risk nonresidential restrictiveness level, the court must order the parent(s) or guardian(s) to pay DJJ a fee of one dollar (\$1.00) per day for each day that the child is in such status for the cost of the supervision. § 985.039(1)(a). When any child is placed into secure detention or placed on committed status and the temporary legal custody of such child is placed with DJJ, the court must order the parent(s) or guardian(s) to pay DJJ a fee of five dollars (\$5.00) per day for the cost of the care for each day that the child is in the temporary legal custody of the DJJ. § 985.039(1)(b). These fees may be reduced or waived only with a finding that the fees would create significant financial hardship or that the parent was a victim in the child's delinquent act and was cooperating with the investigation of the offense. § 985.039(3)-(4).

### **Additional Fees**

Additionally, when a child is adjudicated delinquent for or pleads nolo contendere to a misdemeanor, a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law, the court must assess court costs. § 775.083(2). The court can only assess these costs if there is an adjudication of delinquency; if adjudication is withheld, the cost cannot be imposed. *R.A.V. v. State*, 22 So. 3d 140 (Fla. 1st DCA 2009). The court must also assess an additional fee on any child who is adjudicated delinquent for, pleads nolo contendere for, or has adjudication withheld for any felony, misdemeanor, delinquent act, or criminal traffic offense under the laws of this state or the violation of any municipal or county ordinance which adopts by reference any misdemeanor under state law. § 938.03(1). This fee is in addition to the fee mandated in § 775.083 and any costs assessed as per § 985.039 and cannot be waived. § 938.03(2).

### **Required Information**

The parent of any child who has been placed under the supervision or care of DJJ must provide to DJJ his or her:

- Name,
- Address,
- Social security number,
- Date of birth,
- Driver's license number or identification card number, and
- Sufficient financial information to assist the court in determining the parent's ability to pay any fee associated with the cost of the child's supervision or care. § 985.039(2).

If the parent refuses to provide DJJ with the required information, the court must order the parent to provide the required information. § 985.039(2). The failure of the parent to comply with an order of the court to provide the required information constitutes contempt of court, and the court may punish the parent accordingly. § 985.039(2).

### **Fee Determination**

At a detention or disposition hearing, the court will receive the required information as well as any other verbal or written information offered by the parent of the child being placed in DJJ's care and supervision as to his or her ability to pay any fee imposed pursuant to this section and whether the payment of such fee will create a significant financial hardship. § 985.039(3). The court may divide the obligation for the fee between each parent in a manner it deems appropriate; however, the total amount of the daily fee may not exceed the amounts specified in this section. § 985.039(3). Any finding made by the court as to the ability of the parent to pay such fee, including any finding of indigency or significant financial hardship, must be in writing and contain a detailed description of the facts supporting such finding. § 985.039(3). If the court makes a finding of indigency and significant financial hardship, the court must waive the fee or reduce it to an amount deemed appropriate. § 985.039(3). For any order that fees are to be paid, fees are to be paid in a reduced amount, or fees are waived and must be included in the detention or disposition order. § 985.039(5). A failure to include anything regarding costs in the order will mean that the parent is deemed to have to pay the full amount as specified by law. § 985.039(5).

### **Fee Waiver**

The court may reduce or waive the fee as to each parent if the court makes a finding on the record that the parent was the victim of the delinquent act or violation of law for which the child has been placed under the supervision or care of the department and that the parent is cooperating or has cooperated with the investigation of the offense. § 985.039(4).

### **Child's Obligation upon Turning 18**

For a child who reaches the age of 18 prior to the detention or disposition hearing, the court may direct an order regarding the cost of care and fee assessments to the child rather than to the child's parent. § 985.039(6). If a child reaches 18 while under the supervision or care of the department, the court may, upon proper motion of any party, hold a hearing to determine whether any party should be further obligated to pay any fee associated with the cost of the supervision or care of the child. § 985.039(6). If the court does not enter an order when the child reaches the age of 18 while under the supervision and care of DJJ, it is presumed that the parent must pay or continue to pay the fees specified in § 985.039(6). Any order entered pursuant

to § 985.039(6) must include specific findings as to what fees are ordered, reduced, or waived as to the child.

### **Guardianship Issues**

If any order entered pursuant to § 985.039 affects the guardianship of an estate, a certified copy must be delivered to the judge that has jurisdiction over the guardianship of the estate. § 985.039(8).

### **Parental Liability**

No parent or child shall be liable for any fee provided in this section unless:

- The child is an adjudicated delinquent, or has adjudication of delinquency withheld, for the offense that gave rise to the supervision or care; or
- The child is found to have violated an order of the court, including any order of supervision or care, and the costs are associated with the violation of such order. § 985.039(12)(a)-(b).

### **Fee Reimbursement**

If any funds are paid for the supervision or care of a child who is determined not to meet the criteria specified above, those funds must be refunded to the payor immediately. § 985.039(12).

### **Extension of Care**

Under no circumstances may the court or the department extend the child's length of stay in the department's supervision or care solely for the purpose of collecting the fees specified in this section. § 985.039(11).



## Delinquency/Dependency Crossover Cases

**Crossover child:** a child who is under the dual jurisdiction of the delinquency and dependency courts, who are receiving services from both the child welfare and juvenile justice systems, though not necessarily under the care and supervision of either DJJ or DCF.

### Statistics

Research has shown that victims of physical abuse/neglect are at an increased risk of becoming crossover children and engaging in delinquent acts.<sup>1</sup> In 1995, researchers found that between 9% and 29% of dependency children crossed over into delinquency court.<sup>2</sup> A more recent study found that the delinquency rate for children previously abused or neglected is 47% higher than for those with no such history.<sup>3</sup> Crossover children typically cross into the delinquency court for the first time around 14 years of age, although delinquent or disruptive behavior can begin as early as 7 years of age.<sup>4</sup>

Although boys outnumbered girls among crossover youth, the percentage of girls was 33%, significantly higher than the 26% national average for girls entering the juvenile justice system overall.<sup>5</sup>

There are several factors that have been found to influence the chances a dependency-only child will become a crossover child. Each of the following factors, if present, has been found to increase the likelihood of crossing over.

### Maltreatment

Studies have shown that the abuse/neglect which causes a child to fall under the dependency court's jurisdiction can also affect his or her likelihood of becoming a crossover child. Specifically, abuse or neglect limited to adolescence or continuous abuse or neglect throughout childhood can lead to a

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<sup>1</sup> Denise Herz & Joseph Ryan. *Building Multisystem Approaches in Child Welfare and Juvenile Justice*. National Association of Public Child Welfare Administrators (2008) at 34. The authors cite to 8 other research projects that support this proposition, including Kelly, B. T.; Thornberry, T.; & Smith, C. *In the wake of child maltreatment*. OJJDP Juvenile Justice Bulletin. Washington, D.C. (1997); Ryan, J. P. & Testa, M. K. *Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability*. 27 Children and Youth Services Review 227-249 (2005); and Wiig, J. K.; Widom, C. S.; & Tuell, J. A. *Understanding child maltreatment and juvenile delinquency: From research to effective program, practice, and systemic solutions*. Washington, DC: Child Welfare of America Press (2002).

<sup>2</sup> Shay Bilchik & Michael Nash. *Child Welfare and Juvenile Justice: Two Sides of the Same Coin*. Juvenile and Family Justice Today 16 (Fall 2008) at 17.

<sup>3</sup> American Bar Association. *Policy and Report on Crossover and Dual Jurisdiction Youths* (February 2008).

<sup>4</sup> Terence P. Thornberry, David Huizinga, & Rolf Loeber. *The Causes and Correlates Studies: Findings and Policy Implications*. 9(1) Juvenile Justice 3 (2004) at 14.

<sup>5</sup> Snyder, H. N., & Sickmund, M. *Juvenile Offenders and Victims: National Report Office of Juvenile Justice and Delinquency Prevention* (2006).

wide variety of negative outcomes, chief among them juvenile delinquency.<sup>6</sup> Such abuse and/or neglect has been estimated to increase the risk of arrest as a juvenile by 55% and increase the risk of a violent crime arrest as a juvenile by 96%.<sup>7</sup> However, if the maltreatment is limited to early childhood and ends before adolescence, the child may not be impacted significantly enough for juvenile delinquency to be a common outcome.<sup>8</sup>

Childhood abuse, in general, increases the odds of future delinquency by 29%, although the likelihood of being arrested as a child increases by 59%.<sup>9</sup> In one study, researchers found that maltreated youths were 4.8 times more likely to be arrested as children and 11 times more likely to be arrested for a violent crime than matched control children who had not been maltreated.<sup>10</sup> Further, maltreated children were younger at the time of their arrest and committed nearly twice as many offenses.<sup>11</sup>

The implication that children who are abused and/or neglected tend to engage in delinquent acts at an early age is noteworthy. As one study noted, young offenders are 3 times more likely to become serious violent offenders.<sup>12</sup> Thus, there is a real need to understand the relationship between child maltreatment and juvenile delinquency.

### **Number of Placements**

A factor that has been closely tied to delinquency is the number of out-of-home placements a child has experienced. Even one foster care placement significantly raises the likelihood that a child will come under delinquency court jurisdiction.<sup>13</sup> National data from 2008 indicated that children in dependency systems across the country had an average of 3.2 out-of-home placements per child, with an average time in care per placement of 15.3 months.<sup>14</sup> Researchers from a study in California reported similar results. Ninety-eight percent of all crossover children had at least one out-of-home placement.<sup>15</sup> Sixty-three percent had been placed with a relative at some time, and 62% had been placed in a group home. Data from Florida between October of 2007 and September of 2008 indicates that there is a direct correlation

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<sup>6</sup> *Supra* note 1 at 38-39.

<sup>7</sup> *Id.* at 34.

<sup>8</sup> *Id.* at 38-39.

<sup>9</sup> Janet K. Wiig, with John A. Tuell, *Guidebook for Juvenile Justice and Child Welfare System Coordination and Integration: A Framework for Improved Outcomes*, Child Welfare League of America (2008) at xiii-xiv.

<sup>10</sup> Bernardine H. Watson, *Multi-Problem Youth: A Growing Concern*, Stoneleigh Center (2008) at 4.

<sup>11</sup> *Supra* note 9 at xiii-xiv.

<sup>12</sup> Joseph P. Ryan, Denise Herz, Pedro M. Hernandez, Jane Marie Marshall, *Maltreatment and Delinquency: Investigating Child Welfare Bias in Juvenile Justice Processing*, 29 *Children and Youth Services Review* 1035 (2007) at 1045.

<sup>13</sup> *Supra* note 4.

<sup>14</sup> Peter J. Pecora, *Why Should Child Welfare Focus on Promoting Placement Stability?* CW360: Promoting Placement Stability (Spring 2010) at 4.

<sup>15</sup> *Supra* note 1 at 50.

between increased placements and the length of time the child remains in DCF's care.<sup>16</sup> For children in care for less than twelve months, approximately 83% had two or fewer placement settings.<sup>17</sup> However, for children in care between 12 and 24 months, 61% had two or fewer placement settings.<sup>18</sup> Finally, for children in care for longer than 24 months, only 33% had two or fewer placement settings.<sup>19</sup>

Further, placement disruption has been linked to attachment disorders and other behavioral and emotional problems in children.<sup>20</sup> In particular, attachment disorders such as Reactive Attachment Disorder may frequently result from an increased number of placements, as the frequency of changes in placements and impermanence of care inhibit a child from developing healthy, secure attachments with a caregiver.<sup>21</sup> The more changes in caregiver a child experiences, the more likely the child is to develop an attachment disorder or behavioral problem.<sup>22</sup>

Instability in the dependency system, which results in a higher number of placements, has also been linked to rates of delinquency. Children with multiple placements are more likely to enter the delinquency system.<sup>23</sup> In one study, males with 3 placements were 1.5 times more likely to become delinquent, and males with 4 or more placements were 2.1 times more likely to become delinquent as compared to males with only one placement.<sup>24</sup>

### **Placement Setting**

Studies have shown that children in substitute care settings are approximately two times more likely to engage in delinquency as compared to those receiving in-home care.<sup>25</sup> Specifically, group home settings appear to be the most worrisome; in a Los Angeles study, children with at least one group home placement had a 2.5 times greater risk of delinquency as compared to similar children in other foster care settings.<sup>26</sup> In that study, 2106 children were found to be associated with at least one arrest.<sup>27</sup> Of that number, 1671 (79%)

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<sup>16</sup> Fostering Court Improvement. *Children and Family Services Review Measures During October 2007 through September 2008*. Available online at [http://fosteringcourtimprovement.org/fl/DCFDistrict/cfsr2\\_summary.html](http://fosteringcourtimprovement.org/fl/DCFDistrict/cfsr2_summary.html).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Dana K. Smith, Elizabeth Stormshak, Patricia Chamberlain, and Rachel Bridges Whaley. *Placement Disruption in Treatment Foster Care*. 9(3) *Journal of Emotional and Behavioral Disorders* 200 (Fall 2001) at 200.

<sup>21</sup> Beth Troutman, Susan Ryan, and Michelle Cardi. *The Effects of Foster Care Placement on Young Children's Mental Health*. 16(1) *Protecting Children* (2000) at 30.

<sup>22</sup> *Id.*

<sup>23</sup> *Supra* note 20 at 36.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 35.

<sup>26</sup> Joseph P. Ryan, Jane Marie Marshall, Denise Herz, Pedro M. Hernandez. *Juvenile Delinquency in Child Welfare: Investigating Group Home Effects*. 30(9) *Children and Youth Services Review* 1088 (2008).

<sup>27</sup> *Id.*

experienced their first arrest while in substitute care settings.<sup>28</sup> And of that number, 675 (40%) of the arrests occurred while the adolescent was in a group home placement.<sup>29</sup> This statistic becomes more concerning when the nature of the arrest is considered. At least one-third (31%) of all arrests were related to placement, and two-thirds (66%) of all placement-related offenses occurred at a group home.<sup>30</sup>

Children in group homes were found to be half as likely to be arrested for a weapons-related offense as those not in group homes.<sup>31</sup> However, group home children are three times as likely to be arrested for a threat-related offense and twice as likely to be arrested for a violent offense.<sup>32</sup>

### **Peer Contagion**

An additional factor that may affect adolescents is peer contagion – types of negative exposure and socialization processes that are likely to shape negative behaviors and attitudes.<sup>33</sup> Peer contagion can increase problem behaviors and negative life outcomes throughout adolescence.<sup>34</sup> Prolonged exposure to high-risk peers has an unintended effect of heightening deviant behavior via social relationships.<sup>35</sup> In the dependency system, delinquency can emerge as a child experiences increased placement instability. The bonds the child forms may be stronger with other delinquent children due to the unstable environment and will result in the intake and internalization of delinquent beliefs.<sup>36</sup> Once these delinquent patterns form, they have a “feedback effect, further compromising one’s bond with conventional societal norms.”<sup>37</sup> The concept of deviant patterns includes smoking, alcohol problems, aggression, and delinquency, among others.<sup>38</sup>

### **Gang Membership**

Peer contagion is an issue, especially in the child welfare setting and group home placement in particular, but another aspect of peer contagion can be seen in gang membership. In a study done in New York, approximately 30% of the children studied joined a gang at some point between the ages of 14 and 18.<sup>39</sup> Gang members accounted for the majority of all delinquency in the study, with gang members involved in 63% of all delinquent acts, 82% of serious

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Supra* note 1 at 36-37.

<sup>31</sup> *Supra* note 25.

<sup>32</sup> *Id.*

<sup>33</sup> *Supra* note 1 at 36.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 42.

<sup>37</sup> *Id.*

<sup>38</sup> *Supra* note 25.

<sup>39</sup> *Supra* note 5 at 9.

delinquencies, 70% of drug sales, and 54% of all arrests.<sup>40</sup> Further, the researchers found that gang members had a higher rate of delinquency during the period of gang membership, but not before or after that period.<sup>41</sup> A study in Denver confirmed the New York findings. In the Denver study, gang members accounted for approximately 80% of all serious and violent crime (excluding gang fights).<sup>42</sup> These findings suggest that gang membership facilitates delinquent processes and patterns, making delinquency a much more likely outcome.

### **Depth of Involvement**

Research suggests that “as penetration of the system deepened,” crossover children represent larger portions of delinquency cases.<sup>43</sup> In an Arizona study, only 1% of informal diversion delinquency cases were crossover, compared to 7% of probation supervision cases and 42% of probation placement cases.<sup>44</sup> One study indicated that judicial decisions resulting in detention are strongly associated with a child being in out-of-home placement at the time of the offense, previous crossover referrals, a history of running away, and substance abuse problems.<sup>45</sup>

### **Recidivism**

Crossover children have been found to be as much as twice as likely to recidivate as compared to delinquency-only children.<sup>46</sup> Older children are significantly more likely to recidivate, and children exhibiting truancy patterns are more than twice as likely to recidivate.<sup>47</sup> Further, the trend to recidivate typically continues into adulthood. One study found that, by the age of 28, 89% of boys and 81% of girls in the study were rearrested, and 85% of the boys and 63% of the girls were convicted.<sup>48</sup> In terms of cross-system involvement, 89% of delinquent boys and 87% of delinquent girls were arrested or identified as conformed perpetrators of abuse or neglect before age 28.<sup>49</sup>

## **Effective Practices in Crossover Cases**

### **Court communication**

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 10.

<sup>42</sup> *Id.*

<sup>43</sup> *Supra* note 1 at 43.

<sup>44</sup> *Id.*

<sup>45</sup> *Supra* note 3 at 19.

<sup>46</sup> *Supra* note 1 at 53.

<sup>47</sup> Denise C. Herz, Joseph P. Ryan, and Shay Bilchik. *Challenges Facing Crossover Youth: An Examination of Juvenile-Justice Decision Making and Recidivism*. 48(2) Family Court Review 305 (2010) at 315.

<sup>48</sup> Rebecca Colman, Do Han Kim, Susan Mitchell-Herzfeld, Therese A. Shady. *Long-Term Consequences of Delinquency: Child Maltreatment and Crime in Early Adulthood*. (2008) at executive summary 7.

<sup>49</sup> *Id.* at executive summary 9.

The court should ask at every hearing whether the parties involved in the delinquency proceeding are involved in any related dependency cases.<sup>50</sup> If other related cases are identified, the court should communicate with the judge or judges that are hearing the other cases involving the crossover child. The ability to identify a crossover child can prevent a variety of problems, including duplication of efforts, miscommunication, and extended detention,<sup>51</sup> by increasing coordination between courts hearing cases involving the crossover child.

### **Intensive Educational Support and Stability**

Oftentimes children in the foster care system struggle to succeed in school. If they lack positive school experiences before coming into care, their experiences in foster care often do not model a positive school experience. Moreover, existing preliminary research shows that Zero-Tolerance policies in schools disproportionately affect disabled youth and youth of color, youth who are often overrepresented in foster care. Children in foster care change schools more frequently and are more likely to be suspended or expelled than other students. Therefore, it is imperative that there be a strong corroboration between the educational and child welfare systems.<sup>52</sup>

### **Inter-agency collaboration and Judicial Oversight**

Studies have shown that where coordination is lacking, child functioning and wellbeing is negatively impacted.<sup>53</sup> One of the most effective practices the court can engage in is ensuring that the child gets the help and resources he or she needs from both the dependency and delinquency agencies.<sup>54</sup> The court may inquire, where appropriate, of the agency representatives as to the state of the provision of services to the child by both agencies and provide much-needed oversight.

### **Dispositional considerations**

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<sup>50</sup> *Supra* note 3 at 19.

<sup>51</sup> Gene Siegel, and Rachael Lord. *When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases*. 56 *Juvenile and Family Court Journal* 39 (2005) at 40.

<sup>52</sup> Sherr (2007) discusses the possibility of foster care youth being unfairly targeted for severe school discipline. See also Skiba et al., 2006. *Preventing the School-Justice Connection for Youth in Foster Care*, *Family Court Review*, Vol. 51:No. 3, April 2013, 460-468, Association of Family and Conciliation Courts citing Sherr, T., (2007). *Educational Experiences of Children in Foster Care: Meta-Analysis of Special Education, Retention and Discipline Rates*, *School Psychology International*, 28(4), 419-436; and In C.M. Evertson & C.S. Weinstein (Eds.), *Handbook of classroom management: Research, practice and contemporary issues*. Malwah, NH: Lawrence Erlbaum Associates.

<sup>53</sup> Sara Munson, & Madelyn Freundlich. *Double Jeopardy: Youth in Foster Care Who Commit Delinquent Acts*. 25 *Children's Legal Rights Journal* 9 (2005) at 9.

<sup>54</sup> See for examples: Gene Siegel, and Rachael Lord. *When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases*. 56 *Juvenile and Family Court Journal* 39 (2005); and Michael Nash, Shay Bilchik. *Child Welfare and Juvenile Justice – Two Sides of the Same Coin, Part II*. *Juvenile and Family Justice Today* 22 (Winter 2009).

Traditional delinquency practices can fail to adequately address common consequences of trauma and may re-traumatize a vulnerable child.<sup>55</sup> Thus, when the court reviews possible dispositional outcomes for a crossover child, the court should consider not just the crossover child's actions but also his living situation.<sup>56</sup> Such a comprehensive examination of the family's needs and strengths, combined with an assessment by DJJ or DCF to determine whether the child is at risk of abuse or neglect, can ensure that the court has the necessary knowledge to appropriately determine the crossover child's outcome.<sup>57</sup>

Possible dispositional outcomes that the court may consider in crossover cases, in addition to traditional dispositional options, include ordering the parent or legal guardian of a crossover child adjudicated delinquent to attend a course of instruction in parenting skills, and ordering the child and/or parent or guardian to accept counseling or to receive other assistance from any agency in the community.<sup>58</sup> These approaches result in reduced recidivism, fewer institutional commitments, less criminality among parents and older children, improved educational status, and improved family functioning, among other positive results.<sup>59</sup>

### **Confidentiality of Information**

The court should make certain that any information gathered from a crossover child as part of a diagnostic evaluation is not later used against the child as evidence in court to support a finding of guilt or to enhance punishment.<sup>60</sup> Any such use would "compromise the therapeutic process intended to help troubled foster youth by using it as an opportunity for their self-incrimination rather than as a means to promote the process of rehabilitation and recovery from their victimization."<sup>61</sup>

### **Alternative court models**

If the court uses an alternative court model, such as the Unified Family Court model, the court may hear all cases involving the crossover child and his or her family, as unified family courts operate on the "one family, one judge" principle. For more information about crossover children in unified family courts, see General Topics.

### **The Breakthrough Series Collaborative Team Model**

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<sup>55</sup> *Supra* note 47 at executive summary 12.

<sup>56</sup> *Supra* note 3 at 19.

<sup>57</sup> *Id.*

<sup>58</sup> F.S.A. § 985.512.

<sup>59</sup> *Supra* note 50 at 51.

<sup>60</sup> *Supra* note 4.

<sup>61</sup> *Id.*

Also known as the “Georgetown Model,” the Breakthrough Series Collaborative Team Model is intended to provide a collaborative framework for courts dealing with crossover children. The model guides courts and agencies to work together and share information and duties. The model encourages family participation and emphasizes that crossover children and their families have strengths which, if used properly, would create improved services for the children.<sup>62</sup> This model is currently being used in the 11th circuit, with expansions to the 13th and 17th circuits planned.

### **Time management**

The court may consider reserving a block of time on the court’s calendar specifically for crossover case hearings.<sup>63</sup> Coordinating the schedules of the parties involved could be streamlined by a reserved period of time<sup>64</sup>, as opposed to an unmanaged set of crossover cases interspersed throughout the non-crossover cases. Additionally, scheduling for time-certain hearings can improve the predictability of court events and enhance the credibility and public perception of the court.<sup>65</sup>

### **Courtroom practices**

Crossover children often come under the jurisdiction of the dependency court as a result of abuse in the home. The court in a delinquency proceeding should be aware of the dynamics of family domestic abuse and how they may affect the child or the child’s parents or guardians. For information on courtroom practices where domestic violence is present, see General Topics.

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<sup>62</sup> Lorrie Lutz, Macon Stewart, with contributions from Lyman Legters. *Crossover Youth Practice Model*. Center for Juvenile Justice Reform (2008) at 17. For more information on this model, please see the center for Juvenile Justice Reform website, available online at <http://cjjr.georgetown.edu/pm/practicemodel.html>.

<sup>63</sup> *Supra* note 50 at 45.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 46.



## Departing from DJJ Guidelines

### Generally

Section 985.433(7) details the role of DJJ in the disposition of a child adjudicated delinquent. DJJ prepares a recommendation for the court, indicating the most appropriate place and treatment plan, specifically identifying the level of restrictiveness appropriate for the child. § 985.433(7)(a). The court is required to consider that recommendation when determining the disposition of the child. § 985.433(7)(a). However, the court is not obligated to follow DJJ's recommendation. According to § 985.433(7)(b), the court can follow DJJ's recommendation or may order the child into a different placement level. Any deviation must be supported by reasons recorded by the court and supported by a preponderance of the evidence. § 985.433(7)(b).

### *E.A.R. v. State*

In January of 2009, The Florida Supreme Court released an opinion on a case, *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009). In that case, the court examined what standard satisfied the requirements set forth in § 985.433(7)(b) ("state for the record the reasons that establish by a preponderance of the evidence why the court is disregarding the assessment of the child and the restrictiveness level recommended by the department."), as the District Courts of Appeal were split on that issue. The First, Second, and Fifth District Courts of Appeal required the judge to specifically identify the characteristics of the restrictiveness level imposed with regard to the needs of the juvenile. The Fourth District held that such a requirement did not apply.<sup>66</sup>

The Florida Supreme Court held that the Florida Statutes not only require that the court state its reasons for departing from DJJ's guidelines "on the record" and that the reasons be supported by a preponderance of the evidence, but also that the reasons supplied by the court explain, support, and justify why one restrictiveness level is more appropriate than another. A court must:

- Articulate an understanding of the respective characteristics of the opposing restrictiveness levels, including (but not limited to) the type of child that each restrictiveness level is designed to serve, the potential "lengths of stay" associated with each level, and the divergent treatment programs and services available to the juvenile at these levels; and
- Then logically and persuasively explain why, in light of these differing characteristics, one level is better suited to serving both the rehabilitative needs of the juvenile — in the least restrictive setting — and maintaining

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<sup>66</sup> This summary taken from the Office of Court Improvement's Case Law Update, February 2009, available online at [http://flcourts.org/gen\\_public/family/bin/OSCA-OCI-Case-Law-Update-February.pdf](http://flcourts.org/gen_public/family/bin/OSCA-OCI-Case-Law-Update-February.pdf).

the ability of the State to protect the public from further acts of delinquency.<sup>67</sup>

Appellate courts have subsequently analyzed how juvenile courts are affected by this opinion. For example, the Fifth DCA, in *B.C. v. State*, 29 So. 3d 386 (Fla. 5th DCA 2010), held that a court may sentence a child to consecutive rather than concurrent sentences, as recommended by DJJ, as long as the level the child is sentenced to is that recommended by DJJ. The Fifth DCA reasoned that such a determination is within the court's traditional discretion and not prohibited by *E.A.R. v. State*.

Further, the First DCA, in *J.B.S. v. State*, 90 So. 3d 961 (Fla. 1st DCA 2012), held that a court may deviate from a probation recommendation and follow a subsequent restrictiveness recommendation. Likewise, the First DCA reasoned that such a determination is within the court's traditional discretion and not prohibited by *E.A.R. v. State*. However, a probation recommendation, without any alternative analysis or restrictiveness recommendation, is insufficient to allow the court to proceed with a final commitment disposition order. The First DCA reasoned that such a determination is prohibited by *E.A.R. v. State*. *B.K.A. v. State*, 122 So. 3d 928 (2013).

In both *J.B.S. v. State* and *B.K.A. v. State*, the First District made it clear that the decision to commit or not to commit is that of the court and not a recommendation of DJJ. Accordingly, an *E.A.R.* analysis does not apply to initial determinations of commitment. See § 985.433.

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<sup>67</sup> *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009) at 638.

## Detention Criteria

### Pre-Commitment Detention

Section 985.255 details the criteria courts will use when determining whether a child may be placed into pre-commitment detention. A court cannot detain a child if the criteria are not met.

If a child has been taken into custody and placed into detention care prior to a detention hearing, the court may continue to detain the child if the child meets any of the following, from § 985.255(1)(a)-(f):

- The result of the risk assessment instrument indicates secure or supervised release detention.
- The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.
- The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.
- The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:
  - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
  - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

- The child is a prolific juvenile offender. A child is a prolific juvenile offender if the child:
  - Is charged with a delinquent act that would be a felony if committed by an adult;
  - Has been adjudicated or had adjudication withheld for a felony offense, or delinquent act that would be a felony if committed by an adult, and,
  - Has five or more of any of the following, at least three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
    - An arrest event for which a disposition has not been entered;
    - An adjudication; or

- An adjudication withheld.

If the child has been charged with committing a domestic violence offense, and the child does not meet any of the other detention criteria above, the court may order the child to be held in secure detention if the court makes specific written findings that respite care is not available for the child, and/or that it is necessary to securely detain the child to protect the victim from injury.

§ 985.255(2). The child may not be held in secure detention for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in § 985.255 or § 985.26.

The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. The court shall use the results of the risk assessment performed by the department and shall determine the need for continued detention. If the child is a prolific juvenile offender who is detained under § 985.26(2)(c), the court shall use the results of the risk assessment performed by the department and the criteria in subsection (1) or subsection (2) of § 985.255 only to determine whether the prolific juvenile offender should be held in secure detention. § 985.255(3)(a).

If the court orders a placement more restrictive than indicated by the results of the DRAI, the court must state, in writing, clear and convincing reasons for such placement. § 985.255(3)(b).

When a child is placed into detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in § 985.26 or § 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be held within 3 calendar days after the child's initial detention placement. § 985.255(3)(c).

A child may not remain in detention under a special detention order for more than 21 days unless an adjudicatory hearing for the case has commenced in good faith. § 985.26(2). However, if the offense would be, if committed by an

adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against an individual, the court may, upon a good cause showing that the prosecution or defense needs more time to prepare due to the nature of the charge, extend the length of detention for an additional 9 days. § 985.26(2). The time limits above do not include time extensions due to court-granted continuances. § 985.26(4). Should a time limit be tolled due to a continuance, the court must review the continuance with a hearing every 72 hours, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention and further continuance of the proceedings. § 985.26(4).

Except as provided above, a child may not be held in detention care for more than 15 days following the entry of an order of adjudication. § 985.26(3). The time limit above does not include time extensions due to court-granted continuances. § 985.26(4). Should the time limit be tolled due to a continuance, the court must review the continuance with a hearing every 72 hours, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention and further continuance of the proceedings. § 985.26(4).

The court should use objective facts rather than hidden biases when exercising discretion.<sup>68</sup>

### **Post-Commitment Detention**

The court must place all children who are adjudicated and awaiting placement in a nonsecure, high-risk, or maximum-risk residential commitment program in secure detention care until the placement or commitment is accomplished. § 985.27.

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<sup>68</sup> King, Ryan, and Johnson, Brian, *A Punishing Look: Skin Tone and Afrocentric Features in the Halls of Justice*, AJS Volume 122 Number 1 (July 2016): 90–124. <https://www.journals.uchicago.edu/doi/pdfplus/10.1086/686941>.

Goff, Philip, *Consequences When African-American Boys Are Seen As Older*, March 19, 2014, <https://www.npr.org/2014/03/19/291405871/consequences-when-african-american-boys-are-seen-as-older>

Blair, Irene, Judd, Charles, and Chapleau, Kristine, *The Influence of Afrocentric Facial Features in Criminal Sentencing*, *Psychological Science*, Vol. 15, No. 10 (Oct., 2004), pp. 674-679. <https://www.jstor.org/stable/40064026?seq=1>

## **The Detention Risk Assessment Instrument (DRAI)**

In 2019, the Florida Department of Juvenile Justice (DJJ) issued the new Detention Risk Assessment Instrument (DRAI). This tool was developed after considering the latest statistical analysis techniques and risk-prediction methods in Florida's juvenile criminal justice setting. The goals of the DRAI are to ensure increased public safety, reach the best outcomes for Florida's youth, and hold youth accountable for their behaviors through data-driven decision-making.

The DRAI helps determine the most appropriate placement for youth after arrest. Youth taken into custody by law enforcement are screened by the DJJ's detention screening staff using the DRAI to determine whether a youth should be detained in a secure detention facility prior to their detention hearing, placed on supervised release, or released without any additional supervision. Youth appear before the court within 24 hours of being taken into custody, at which time the juvenile judge determines whether there is a need for continued detention. Section 985.245(1) states:

All determinations and court orders regarding placement of a child into detention care shall comply with all requirements and criteria provided in this part and shall be based on a risk assessment of the child unless the child is placed into detention care as provided in § 985.255(2).

The instrument is designed to determine the likelihood that the youth will fail to appear or commit a new offense within a 60-day time period. The DRAI assists the state in utilizing the full range of options by identifying the appropriate target population for each level of supervision.

If the court finds a material error in the scoring at the detention hearing, the court may amend the score for accuracy. § 985.245(3).

For a child under the supervision of the department through probation, supervised release detention, conditional release, post-commitment probation, or commitment and charged with committing a new offense, the DRAI may be completed and scored based on the underlying charge which placed the child under the department's supervision. § 985.245(4).



## ION II. RISK ASSESSMENT

### DEPARTMENT OF JUVENILE JUSTICE DETENTION SCREENING INSTRUMENT

DJJID: \_\_\_\_\_  
Referral ID: \_\_\_\_\_

Date: \_\_\_\_\_ Detention Center: \_\_\_\_\_

#### SECTION I. IDENTIFICATION INFORMATION

Youth's Name \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Eye Color: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Date/Time Screened: \_\_\_\_\_ JPO Assigned: \_\_\_\_\_ Contacted: Yes ☐ No ☐

School or Work Contacted: Yes ☐ No ☐

#### Parent/Guardian Information

Parent/Guardian Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Parent/Guardian Interviewed: Yes ☐ No ☐

Time of Interview: \_\_\_\_\_

Method: ☐ Face-to-Face ☐ Telephone

☐ Left a message with: ☐ Unable to Contact

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

#### Law Enforcement Agency Information

LE Agency: \_\_\_\_\_

Name/Badge No. \_\_\_\_\_

#### Rights/Abuse History Questionnaire:

Youth advised of right to legal counsel? Yes ☐ No ☐

FSFN record check? Yes ☐ No ☐

Current allegation of abuse/neglect pending? Yes ☐ No ☐

History of substantiated or indicated abuse/neglect? Yes ☐ No ☐

Type: Physical Abuse ☐ Sexual Abuse ☐ Neglect ☐ Emotional ☐

#### Alleged Offense(s): List All

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## SECTION II. RISK ASSESSMENT

**Directions:** Score only **ONE** factor for each category; Use applicable factor with the **HIGHEST POINT VALUE**.

1. Most Serious Presenting Offense	Pt. Value	Score
a. Capital, life or first-degree felony punishable by life (PBL)	20	
b. Violent first- or second-degree felony, or vehicular homicide	20	
c. Any offense involving use or possession of firearm	20	
d. Violent third-degree felony, Burglary of Dwelling 810.02 (3)(a) or 810.02(3)(b), or Five (or more) burglary offenses presented at once	10	
e. Non-violent first-, second-, third-degree felony or any misdemeanor	6	
f. Technical Violation or Municipal Ordinance	2	

2. <b>Prior Referrals</b> <i>(All referrals screened prior to this one regardless of offense date must be counted. Each police report is its own referral. Do NOT consider individual counts) *Dismissed, Non-file, and Nolle Prosequi referrals will NOT be counted. *Civil citations or equivalent pre-arrest programs will NOT be counted.</i>	Pt. Value	Score
a. Three or more prior felony or misdemeanor referrals	3	
b. Two prior felony or misdemeanor referrals	2	
c. One prior felony or misdemeanor referral	0	
d. Current offense is first offense <i>(No prior referrals)</i>	-1	

3. <b>Delinquent History</b> <i>(*Dismissed, Withdrawn, Non-file, and Nolle Prosequi referrals will NOT be counted.)</i>	Pt. Value	Score
a. Prior abscond or escape <i>(*Presenting abscond must be counted)</i>	4	
b. History of law violations prior to court hearings <i>**Definition: A felony or misdemeanor offense was committed between the referral and disposition dates of a previous new law or violation referral. Both the primary and secondary referrals must have a disposition and not have been dismissed, non-filed, or nolle prosequi.</i>	4	
c. Two or more prior failures to appear (FTAs) <i>(Offense Date Based)</i>	3	
d. History of Violations <i>(Presenting technical or any type open/historical violations of any supervision type must be counted)</i>	2	
e. No history of escape, abscond, law violation pending court, violations, or FTAs <i>(as defined in a-d)</i>	-1	

4. <b>Current Legal Status</b> <i>(At the time of screening)</i>	Pt. Value	Score
a. Currently committed or conditional release	4	
b. Current detention status/currently on supervised release	3	
c. Currently on probation or post-commitment probation for 90 days or less	3	
d. Currently on probation or post-commitment probation for more than 90 days	2	
e. No current involvement <i>(as defined in a-d)</i>	-1	



## SECTION II. RISK ASSESSMENT

<b>5. Current Age</b> <i>(At the time screening)</i>	Pt. Value	Score
a. Age 12 or younger	0	
b. Age 13, 14, 15 or 16	1	
c. Age 17 or older	0	
<b>TOTAL SCORE (sum of Items 1-5)</b>		

***Scale: 6 or less = Release; 7 to 12 = Supervised Release; 13 or more = Detain***

<input type="checkbox"/> A.	The youth is <b>wanted in another jurisdiction</b> for an offense which if committed by an adult, would be a felony.												
<input type="checkbox"/> B.	The <b>youth</b> is alleged to have committed a delinquent act or violation of law and <b>requests</b> in writing through legal counsel to be detained for protection from an imminent physical threat to his/her personal safety, (attach documentation)												
<input type="checkbox"/> C.	<p>The youth is alleged to have committed an offense of <b>domestic violence</b>, as defined in § 741.28(1), that does not otherwise meet detention criteria. The youth may be held in secure detention if the following two conditions exist:</p> <p><input type="checkbox"/> It is necessary to place the youth in an alternative setting to protect the victim from injury.</p> <p><input type="checkbox"/> Respite home or similar authorized residential facility for the youth is NOT available.</p>												
<input type="checkbox"/> D.	<p>The youth meets the criteria outlined in § <b>985.255 (1)(f) Prolific Juvenile Offender</b>. The youth shall be placed on supervised release with electronic monitoring or in secure detention until disposition.</p> <p><i>*All PJO youth will be securely detained until the detention hearing.</i></p>												
<input type="checkbox"/> E.	Youth alleged to have committed a delinquent act and <b>currently on any type of supervision for an offense that would score 20 points</b> in Section II: Most Serious Presenting Offense will be placed in secure detention pending a detention hearing regardless of score.												
<input type="checkbox"/> F.	<p><b>Presenting Judicial Order(s)</b> (<i>Placement based on court order instructions</i>)</p> <p><u>Select reason for the order issuance:</u></p> <table border="0"> <tr> <td><input type="checkbox"/> Abscond</td> <td><input type="checkbox"/> Pending Commitment Placement</td> <td><input type="checkbox"/> Violation of Probation</td> </tr> <tr> <td><input type="checkbox"/> Contempt of Court</td> <td><input type="checkbox"/> Probable Cause PUO</td> <td><input type="checkbox"/> 72 Hour FTA Hold</td> </tr> <tr> <td><input type="checkbox"/> Failure to Appear</td> <td><input type="checkbox"/> Traffic Court Contempt of Court/FTA</td> <td><input type="checkbox"/> 72 Hour Comp. Eval.</td> </tr> <tr> <td><input type="checkbox"/> Out-of-State PUO/HOLD</td> <td><input type="checkbox"/> Violation of Supervised Release</td> <td><input type="checkbox"/> Other Detention Order</td> </tr> </table>	<input type="checkbox"/> Abscond	<input type="checkbox"/> Pending Commitment Placement	<input type="checkbox"/> Violation of Probation	<input type="checkbox"/> Contempt of Court	<input type="checkbox"/> Probable Cause PUO	<input type="checkbox"/> 72 Hour FTA Hold	<input type="checkbox"/> Failure to Appear	<input type="checkbox"/> Traffic Court Contempt of Court/FTA	<input type="checkbox"/> 72 Hour Comp. Eval.	<input type="checkbox"/> Out-of-State PUO/HOLD	<input type="checkbox"/> Violation of Supervised Release	<input type="checkbox"/> Other Detention Order
<input type="checkbox"/> Abscond	<input type="checkbox"/> Pending Commitment Placement	<input type="checkbox"/> Violation of Probation											
<input type="checkbox"/> Contempt of Court	<input type="checkbox"/> Probable Cause PUO	<input type="checkbox"/> 72 Hour FTA Hold											
<input type="checkbox"/> Failure to Appear	<input type="checkbox"/> Traffic Court Contempt of Court/FTA	<input type="checkbox"/> 72 Hour Comp. Eval.											
<input type="checkbox"/> Out-of-State PUO/HOLD	<input type="checkbox"/> Violation of Supervised Release	<input type="checkbox"/> Other Detention Order											

#### SECTION IV. STATE ATTORNEY REVIEW/DECISION

If a screener believes a youth who is eligible for detention based upon the results of the risk assessment instrument should be released or placed in a supervised release program, the state attorney must be contacted to approve the release. If the screener has factual reasons to believe a youth that does not otherwise score for a detention status (supervised release or secure detention) should be placed on a detention status, the state attorney must be consulted to gain agreement with the elevated supervision status. The youth's supervision status can only be modified (up or down) one supervision category. The screener must document the justification for the recommendation in the narrative section.

Name of SA: \_\_\_\_\_ Release Decision: ☐ Release ☐  
 Supervised Release ☐ Detain

## SECTION V. FINAL SCREENING DECISION

Placement:

Release ☐

Supervised Release ☐

Secure Detention ☐

Notification of Hearing:

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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**Completed by:** \_\_\_\_\_

## Differential Warrants as an Alternative Response

In 2020, the Florida Department of Juvenile Justice conducted a study to identify trends in detention admissions after the implementation of the new Detention Risk Assessment Instrument (DRAI). The statewide study of fiscal year 2019-2020 data showed that while only 31% of screenings produced scored for secure detention, 54% of screenings resulted in a secure detention placement. The primary reason for the elevated admission percentage was the impact of warrants for technical (rule breaking) behavior violations that mandated the placement of secure detention - regardless of the DRAI score. All youth are scored using the DRAI at screening, and generally, the DRAI score determines whether the youth is released, released under supervision, or detained. However, if a warrant is issued ordering the youth be held in secure detention, even if the youth scores for release or supervised release, the warrant requirement overrides the score and the youth is detained.

When the warrants were examined, the study revealed that the most prevalent reason for holding a youth in secure detention was for the juvenile failing to appear (FTA) for a court hearing. Of the youth detained for a FTA, 58.5% were released at the detention hearing or within less than four days.

These court-ordered overrides placing low and medium risk youth in secure detention who do not score this type of detention exposes youth to the trauma of being securely detained for a minor offense.

As a result of this study, the Florida Youth Justice Commission (FYJC) began exploring ways to reduce the number of youths securely detained for FTA. Consequently, the Commission suggested the implementation of a differential warrant policy that would sync the general authorization to issue warrants for FTA found in §985.101(1)(a)<sup>1</sup> with the court's obligation to determine willfulness, while also considering situations outside of the youth's control that could have contributed to the youth's failure to appear. Section 985.24, F.S., which governs the use of detention care, does permit issuance of a court order if a child is found to "present a *substantial* risk of not appearing at a subsequent hearing." Additionally, if a child has been detained for failing to appear, § 85.255(1)(e), F.S., sets forth the criteria of when a court **may** order a youth to remain in detention. Under this section, child must have failed to appear at least one time prior to the current incident, and there must be a finding that the prior FTA was "willful."

### What is a differential warrant policy?

Differential warrant policies are court policies that differentiate how warrants can be handled based on the risk that the youth poses to public

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<sup>1</sup> 985.101(1)(a) F. S.

safety, and the circumstances prompting issuance of the warrant. Rather than having all youth brought to detention when they are picked up on a warrant, differential policies allow some youth to be summoned to court directly or held in a non-secure setting until they appear before the judge who issued the warrant.

Differential warrants may be applied to several types of court orders to reduce unnecessary placement of youth in secure detention, including but not limited to:

- Failure to Appear
- Contempt Orders
- Absconding
- Violation of supervised release
- Violation of probation

### Procedure

Pursuant to § 985.101, before a court issues an order to take a child into custody for failing to appear, it must consider all of the following information relating to whether the child's nonappearance was willful:

- Whether notice was sent to the child's address included in the official court record.
- Whether any person provided notice to the child in any format.
- If the child is represented by counsel, whether counsel for the child has information that the nonappearance was not willful or was otherwise beyond the child's control.
- Whether a department representative had contact or attempted to have contact with the child.
- Whether the department has any other specific information to assist the court in making the determination.

After assessing this information, the court should then choose one of three options upon taking the youth into custody on a pick-up order:

- Notice to Appear at a rescheduled hearing.
- Screen with a DRAI.
- Mandatory hold in Detention until a Detention Review is held on the next Detention docket.

### Reasons to Implement

Several benefits may result upon implementing this practice:

- Lower risk youth will not be exposed to higher risk youth, or experience the trauma of incarceration without due cause,
- Using a differential warrant reduces the number of hearings needed, and
- The statewide use of differential warrants could create uniformity across circuits and reduce justice by geography, while increasing court

efficiency and potentially reducing the number of cases on the court calendar.

### Legal Authority and Case Law

Florida law addresses secure detention for failures to appear in several statutes.

- One finding to determine the use of detention care is “that the child presents a substantial risk of not appearing at a subsequent hearing, or other factors outlined in this statute.” **§ 985.24(1)(a) F.S.**
- A child may be taken into custody pursuant to an order of the circuit court issued under this chapter, based upon sworn testimony, either before or after a petition is filed.  
**§ 985.101(1 (a)F.S.**
- A child taken into custody and placed into detention care shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order a continued detention if the child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice: 1. for an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or 2. at two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument. **§ 985.255(1)(e) F.S.**
- **Case Law** – In *A.K. v. Dobuler*, 951 So.2d 989 (Fla. 3<sup>rd</sup> DCA 2007), the court noted that § 985.101, Florida Statutes (2007) provides that if a child fails to appear at a court hearing, the trial court is authorized to issue a “pick-up” order to take the child into custody. However, a failure to appear, standing alone, does not support placement in secure detention for twenty one days.

### PLANNING FOR IMPLEMENTATION

Before beginning the implementation process, here are some factors the must be considered to increase the likelihood of success:

- **Collaboration is key!** Any data point chosen for exploration and improvement will impact multiple juvenile justice stakeholders. It is important that stakeholder collaboratives collectively review the available information, provide opportunities for voices from varies perspectives, and understand the true root causes. Be sure to include the local Justice Reform Coordinator who can assist in interpreting the data in the report and help with additional data collection, analysis, and policy making.
- **Decision makers** – The most effective collaboratives include leaders within their agencies who have decision making authority.

- **Review the data** – Ask more questions to get clarity on what’s happening. Use the findings to create a new court order form that includes options for differential warrants.
- **Written local policy** – Once a new court order form is created, stakeholders will want to ensure that the form is used as intended to achieve the best results. Since the form will be around for a long time, stakeholders will also want to ensure that their successors use the form with fidelity. The most effective way to do this is through the creation of written policy. Having a written policy increases the likelihood that the practice will continue with fidelity regardless of changes in key stakeholder positions.
- **Justice Reform Coordinator** – The Department of Juvenile Justice has assigned a Justice Reform Coordinator (JRC) to each circuit. JRCs are trained in the data-decision making model, conduct data analysis, and provide insights on state and national best practices.

**COVID-19** – The spread of COVID-19 caused major shifts in the way court hearings are held. Most circuits adopted virtual hearing platforms to allow youth/families to appear for court hearings from their respective homes. Judiciary partners have noted significant reductions in failure to appear rates and increased parental involvement since this option for appearance was made available. **However, it is unclear whether these virtual attendance policies will continue after the pandemic is over. Whether they do or not, it is imperative for circuits to implement sustainable plans to eliminate the unnecessary use of secure detention.**

## IMPLEMENTATION STEPS

### Identify Stakeholders

If possible, these stakeholders should, at a minimum, be at the collaborative table to explore the data and to design/implement a differential warrant policy.

- **Circuit JRC** – JRCs are trained in the data-decision making model, conduct data analysis, and provide insights on state and national best practices.
- **Department of Juvenile Justice Probation Representative** – A probation officer is assigned to every youth with an open case. The Chief Probation Officer (CPO) is also responsible for oversight of the Juvenile Assessment Center (JAC) functions.
- **Court & Administrative Judge** – The administrative judge makes the final decision on court order requirements. Issues administrative order adopting the order, and/or practice or policy.

- **Public Defender & State Attorney's Office** – Both offices must agree to reasonable and less restrictive options in court order; Leaders within the offices must be identified in order for this concept to become a reality. Before these parties are made aware of the intention to formalize this concept, it is likely they will have differing positions on the use of differential warrants as a uniform order.
- **Clerk's Office** – *Administrative role*. Necessary in order to send court dates to the JAC. Partnership with the JAC is necessary to ensure appropriate issuances of court hearing dates in the most effective manner.
- **JAC Supervisor** (Depends on circuit makeup – *low priority*) – If the JAC does not already have a process for assigning court dates, the JAC supervisor's presence may be to ensure the new process is implemented correctly.

### Review Data

- Begin with the DRAI and Supervised Release Report.
- Ensure all partners understand the what the data say and its implications.
- The data in the report will only show the “what,” it does not explain the “why.” Ask questions to gain a deeper understanding the root causes of the data to determine what changes, if any, need to be made. Collect additional data as necessary to get the deeper questions answered. The local JRC will be ready and able to assist with this task.

### Examine Current Policies/Practices

- Discuss the current policies and practices of each stakeholder group used to process failure to appear.
- Stakeholders tend to only look at the system through their respective lens and make assumptions about how the other pieces work. This process should give all individual a clearer view of how the system works together to respond to the issue and allow for collective decision on how to streamline and improve policy/practices for all.

### Develop a Process Map

Process maps provide a visual representation of the system's activities and allow stakeholders to better understand the chronological order of all steps in the process.



### Drafting the order

- FYJC or DJJ can provide a sample differential warrant to begin solidifying the circuit's order. The collaborative should review the information in the order to determine the appropriate options to be included.
- A final version of the new order should be approved by all collaborative members.

### Drafting the Policy

It's important to ensure the positive changes to newly adopted practices are understood by all and sustainable for years to come. The easiest way to accomplish this goal is to solidify changes in practice through collectively agreed upon policy. Circuits should seek to establish an MOU or other forms of written collective agreement to ensure the longevity of the change.

### Training and Technical Assistance

The Justice Reform Team is always available to provide training and technical assistance to circuits. Please contact the local assigned Justice Reform Coordinator at any time.

### On-going data tracking

Circuit can track the impact of the differential warrant policy and any other changes made with the semi-annual DRAI and Supervised Release Reports issued from the Department. Justice Reform Coordinators can also conduct deeper level data analysis to provide insights on any additional elements not included in the report.

## DATA

### Reports

Every six months, circuit and state-level DRAI and Supervised Release (SR) Outcomes Reports are released by DJJ capturing data from the previous six months. The report provides circuit level information that is essential for identifying patterns in admissions and for understanding the performance of local supervised release programming. Leaders should use this information to determine the need for a differential warrant policy. Once local stakeholders agree to go forward, additional questions may arise. DJJ has assigned reform specialists to each circuit who can help the group interpret their local data and collect additional information to further inform local policy. Special attention should be given to noting racial and ethnic disparities. The semi-annual reports are distributed to circuit stakeholders by the Chief Probation Officers and Justice Reform Coordinators. They are also posted to DJJ's [website](#).

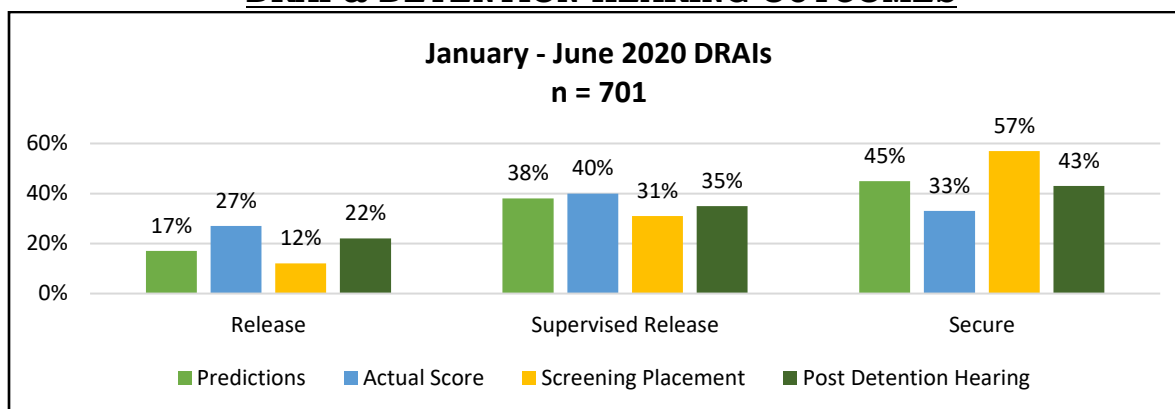
## Data examples

Below are tables and charts from a DRAI/SR Outcomes Report that were released for the January – June 2020 period. While reviewing the tables, please keep in mind that the data represented has been selected to help highlight the positive impact of adopting a differential warrant policy.

***In each report, Figure 1: DRAI and Detention Hearing Outcomes shows the differences between youth's score, screening outcomes, and detention hearing outcomes. All percentages are a product of the total number of screenings in a particular timeframe or "n" at the top of the chart.***

In Figure 1 below, the *secure detention* bars on the right show that 33% of the n score for secure detention (blue bar), 57% of the n were placed into secure detention as a result of the screening (yellow bar), and 43% of the n (dark green bar) remained in secure detention after the detention hearing.

**Figure 1**  
**DRAI & DETENTION HEARING OUTCOMES**

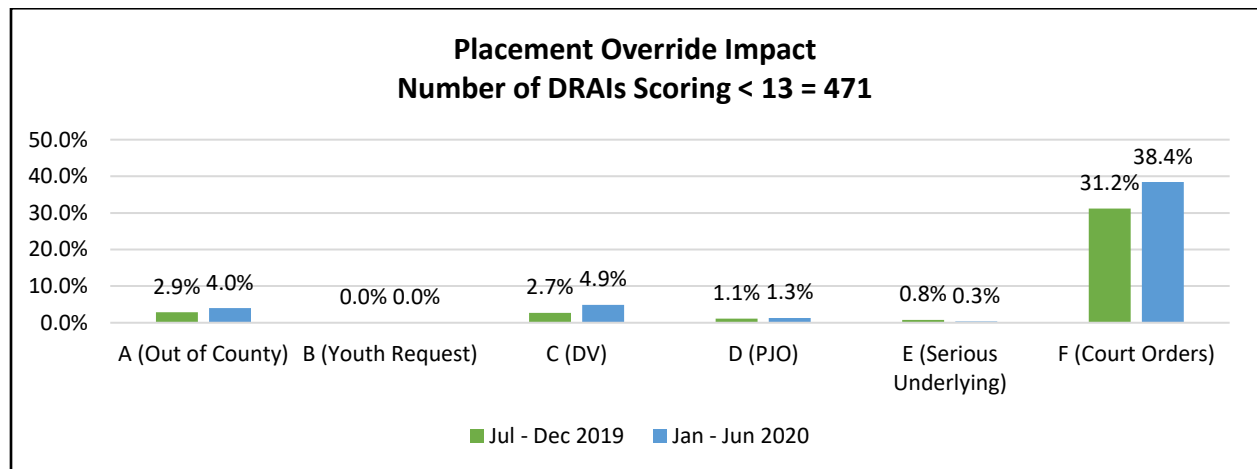


\*\* Release Range = 6 points or less, Supervised Release Range = 7-12 points, Secure Range = 13 or more

**Figure 2**

In each county report, *Figure 2: Placement Override Impact* shows how the placement overrides included in the instrument impact the youth's placement. Figure 2 shows only the screenings that initially did not score for secure detention, but instead, the screener invoked the placement override which resulted in that youth's placement in secure detention. The process for invoking a placement override is as follows: upon completion of the scoring, the screener determines if the youth meets the criteria for any of the placement overrides. For overrides A – E, admission into secure detention is mandated, regardless of score, until a decision on appropriate continued supervision is made by the court at a detention hearing. While overrides A, C, D, and E are invoked based on statutory criteria, overrides B and F are invoked on

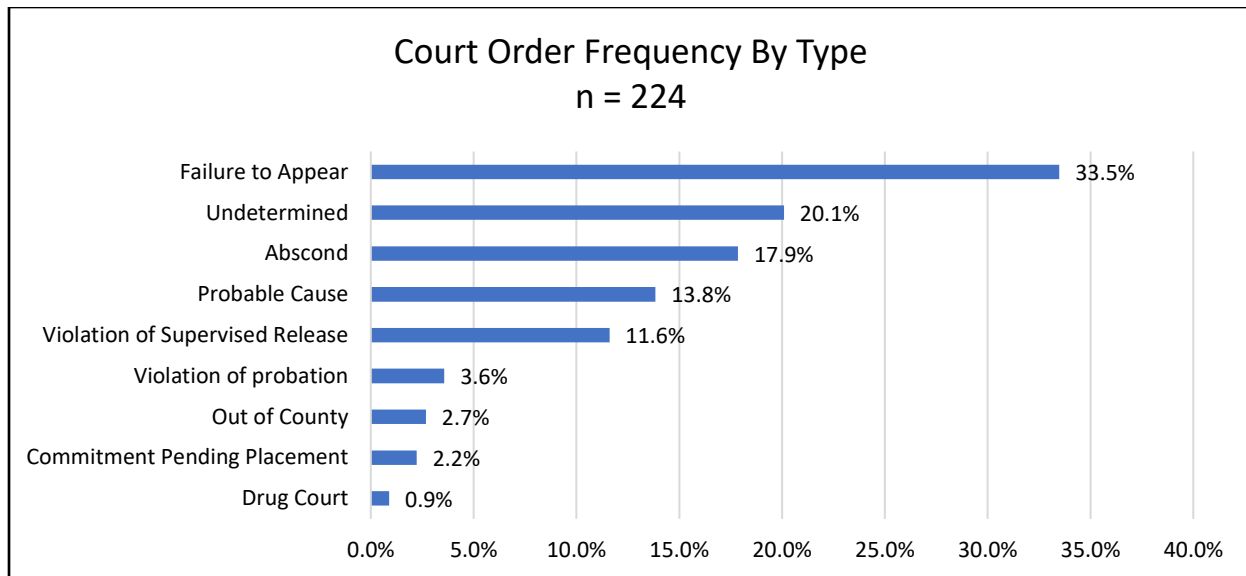
discretionary criteria. Override B is invoked by a youth's request for secure detention placement due to personal safety concerns. **For override F, the screener must read the direction provided by the court on a court order to determine the youth's placement.** These data show that overrides A-E were rarely invoked for youth who did not score for secure detention. However, *override F was invoked in almost 1/3 the screenings* of youth who did not score for secure detention, making up 31.2% of all overrides into detention in July-December 2019, and 34.8% of all overrides into detention during the January - June 2020 timeframe.



\*Secure = 13 or more points, DV = Domestic Violence, PJO = Prolific Juvenile Offender

**Figure 3**

In each report, *Figure 3: Court Order Frequency by Type* examines, for youth detained due to a court order placement override, the reasons court orders were issued and the frequency in which each type of order is used. The total number (n) of orders issued will always be provided at the top of the chart. Each percentage is a product of the n. Figure 3 below shows that the most common court order issued that results in secure detention, even when a youth does not score for this placement is for failure to appear (33.5%).



\*Undetermined = Information available in the Juvenile Justice Information System (JJIS) did not provide enough detail to determine the appropriate category for these orders.

\*\*Some youth were processed for multiple types of orders in one screening and are therefore counted in multiple categories.

**Figure 4**

In each local report, Figure 4 lists the top three court order types most frequently issued compared to their frequency of issuance data over two six-month time periods. These data show that for the top three override-to-placement court order types, the top two types were issued less in the January-June 2020 timeframe as compared to the July-December 2019 timeframe, while the 3<sup>rd</sup> was issued more in January to June 2020 than in the previous six months. It's important to note that the impact COVID-19 may have affected the statistics for the January – June 2020 period.

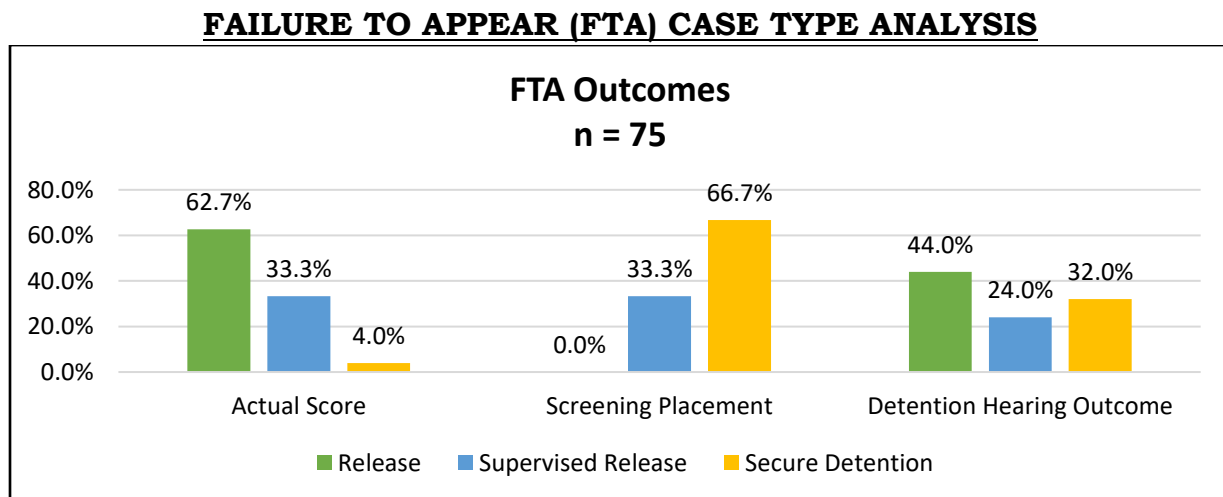
**Top Three Determinable Type: Failure to Appear (FTA), Violation of Supervised Release, and Abscond**

	<b>July – Dec 2019</b>	<b>Jan- June 2020</b>	<b>% Change</b>
Failure to Appear (FTA)	113	75	Down 33.6%
Abscond	43	40	Down 7%
Probable Cause	24	31	Up 29.2%

**Figure 5**

In each circuit report, Figure 5 provides a Failure to Appear Case Type Analysis. Since failure to appear is included in the top three highest frequency types for every circuit, each report provides an in-depth analysis of the screenings included in this court order type. The initial chart provides an overview of the variances between score, screening placement, and detention hearing outcomes. Each percentage is a product of the total number of screening (n) provided at the top of the chart.

Figure 5 below shows that 62.7% of all FTA cases scored for release with 33.3% of those cases scoring for supervised release. Together, they account for 96% of all screened FTA cases. The initial outcome of these screenings, however, was that 66.7% of these cases were detained because the court order mandated secure detention. Importantly, at the detention hearing, 44% of these cases were released, and 24% were placed on supervised release. Collectively, youth released or placed on supervised release at the detention hearing make up 68% of the total.



\* Release Range = 6 points or less, Supervised Release Range = 7-12 points, Secure Range = 13 or more

**Figure 6**

Figure 6 provides a deeper analysis of screenings conducted solely for a failure to appear. This means the screening did not include a new charge, application of any other overrides, or any other court order types. Each factor listed in the left column was analyzed separately from the other factors in the column. The percentages included in the row of each factor is a product of the total number of cases that met the aforementioned criteria.

In this example, the total number of cases was 65. Using the table below, we can see that 63.1% of the 65 FTA were issued for misdemeanor offenses and 36.9% were issued for felony offenses. 75.4% of the 65 FTA were issued for youth that were not on any active supervision. 84.6% of the 65 cases has 1 or no previous FTA. 96.9% of the 65 FTAs did not fail to appear within a 45 days widow of release. 69.2% of the youth detained were released from secure detention at the detention hearing.

	<b>Misdemeanor</b>		<b>Felony</b>
<b><i>Underlying Charge (FTA Order)</i></b>	63.1%		36.9%
	No Active Supervision		Active Supervision
<b><i>Supervision Status</i></b>	75.4%		24.6%
	No Previous FTA	One Previous FTA	2 or More
<b><i>Number of Previous FTAs</i></b>	55.4%	29.2%	15.4%
	No FTA w/in 45 Days		FTA w/in 45 Days
<b><i>FTA within 45 Days of Release</i></b>	96.9%		3.1%
	Straight Released		Supervised Release
<b><i>Detention Hearing Outcomes -</i></b> <i>69.2% of securely detained youth were released from secure detention at the detention hearing</i>	49.2%		20%

## **Delinquency, Youth & Drugs**

OSCA has assumed a leadership role in addressing the opioid epidemic by sponsoring the **Florida Courts Opioid Initiative** (FCOI). This Initiative is a statewide judicial branch response to Florida's opioid crisis, involving both statewide and circuit-specific efforts. The Initiative, as also coordinated through the Office of Court Improvement, focuses on enhanced awareness and effective ways to address this epidemic, especially through actions of the problem-solving courts and family courts. These efforts have been expanded to also encompass stimulants and their impacts on people and the court system. Further details are here: <https://www.flcourts.org/Resources-Services/Court-Improvement/Opioid-Initiative>.

### **How Youth Are Affected**

Youth who engage in drug use risk their very future through adverse effects on their health, relationships with family and others, performance in school, job preparedness, and in other ways, including engagement in delinquency behaviors.

Impacts on both physical and mental health can be serious if not life-threatening. Through behavioral changes induced by drugs, juveniles can enter a life of delinquency – or worse, resorting to crimes of higher consequence. Opioids and stimulants affect the brain in a way that compels the person using drugs to keep on using and, as addiction occurs, go to whatever lengths necessary to obtain a continuous supply of drugs. Many lives are ruined through the destructive cycles involved with drug use.

### **Avoidable Consequences**

The consequences of drug use and addiction can be severe and lasting, ruining young lives and unrealized potential. Not only are their lives impacted, but so are those of many others whose lives they touch – families, friends, teachers, victims of the crimes they commit, pets, and others. Addicted individuals are often unable to help themselves. Through treatment and other support, prevention and effective intervention can be achieved.

### **Brain Matters**

Drugs affect the condition of the brain and how it works. Damage to the brain's cells and neurotransmitters, as caused by drug use, can have lasting and even fatal consequences. Studies have proven that effects on the brains of young people are even worse since brain development isn't complete until around the age of 25.

Of particular concern, drug misuse impairs the brain's prefrontal cortex, the area responsible for judgment, the control of emotions, and a person's

decision-making abilities. Altering these functions has many concerning implications, poor judgment, and reckless behavior among them. Persistent drug use compounds the problem through added damage to the brain.

### **Teen Pregnancy**

Teens under the influence of alcohol and drugs are much more prone to risky sexual conduct and unwanted pregnancies (not to mention STDs, HIV, and other ill effects).

For teens who become pregnant, the drugs in their bodies place strains on their health and are also passed on to the babies that they will deliver. This in turn puts these young lives at risk in ways that can have long-term health and developmental impacts – from premature births, stillborn births, and birth defects to reduced capacity for memory and other cognitive performance impairments, to the tendency for heart attacks, stroke, and respiratory failure, among other serious or severe impacts on the life of the baby, child and, ultimately, adult.

### **Role of Drugs in Delinquency**

While some experts disagree on which comes first, drug use or delinquency, there's no question about the inextricable link between the two.

Drug use results in chemical changes within the brain that can produce and reinforce dangerous and otherwise negative behaviors. Cravings that occur for more drugs and petty theft or other crimes often become the means of securing a continued supply of drugs. Childhood and adolescent aggression, violence, and anti-social tendencies can develop or be furthered in the process. Property damage is likewise connected to the pursuit of drug supplies. Still, other offenses are common as well.

Once a pattern of such behaviors is established, some who misuse drugs transition to increasingly serious crimes, such as drug trafficking, prostitution, and gang participation. Once a young user of drugs goes too far, homelessness is not uncommon and reinforces the cycle of delinquency and other crimes.

### **How the Courts Can Help**

The courts, treatment providers, and other court partners can play a vital role in breaking the cycle of drug misuse and enabling youth and others to reclaim their lives. The courts have the special role of being able to compel and facilitate prevention and intervention strategies in the interest of participant recovery.

Addressing court participants on an individual basis that seeks to understand their status, needs, and history can be effective as part of a “whole person” approach. Participants who have experienced trauma or co-occurring mental or



emotional health issues especially benefit from this approach, including tailoring of court actions and treatment provider services with these concerns in mind.

Evidence-based treatment methods are available that emphasize the individual's needs along with family or other support system engagement as well as co-occurring conditions. Medication Assisted Treatment (MAT) and Medication for Opioid Use Disorder (MOUD) are proven to be effective means of stopping cravings for drugs, preventing overdose, and helping patients recover from drug addiction. Counseling and other approaches involving psychology and motivation can likewise help affected individuals break the grip of drugs on their lives.

Techniques like Motivational Interviewing can enable judges to achieve improved outcomes for court participants as they enter and go through the judicial process.

The actions and approaches of judges and court personnel can make a profound difference in combatting addiction, reducing delinquency, and improving the lives of so many who are affected, both directly and indirectly, by illicit drugs and the misuse of prescription drugs.

For more information, please see the [OSCA Delinquency Resource Library](#).

## Discovery

### Generally

Discovery is not a mandatory part of the delinquency process. To engage in discovery, a child can elect to participate by filing with the court and serving on DJJ a “notice of discovery,” which serves to inform all involved of the child’s desire to engage in discovery; this election also serves to bind all parties to the rules of discovery as contained in the Rules of Juvenile Procedure. Rule 8.060(a)(1). The court may, on good cause shown, alter the times for compliance with any discovery. Rule 8.060(g).

Except as otherwise provided, no party shall advise a person who has relevant material or information, except the child, to refrain from discussing the case with opposing counsel or from showing opposing counsel any relevant material, and no party may impede opposing counsel’s investigation of the case. Rule 8.060(i).

### Required Disclosure to the Child

If a child has elected to participate and filed a “notice of discovery,” DJJ has 5 days to serve a written discovery exhibit on the child. The written discovery exhibit informs the child of the following and allows him or her to inspect, copy, test, and photograph any of the following information or material in DJJ’s possession or control:

- Names and addresses of everyone known to DJJ to have information that might be relevant to the crime alleged, to any defense, or to any similar fact evidence that may be presented at the adjudication hearing. The names and addresses must be categorized as follows:
  - Category A: witnesses such as eyewitnesses; alibi witnesses and witnesses rebuttal alibi; witnesses present during recorded or unrecorded statements by the child; investigating officers; witnesses known by DJJ to have information that tends to negate the guilt of the child as to the allegations; child hearsay witnesses; and expert witnesses who have not provided a written report and curriculum vitae or will testify to test results or give opinions that will meet the Daubert test (*Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); see also Fed. R. Evid. 702).
  - Category B: witnesses not listed in Category A or Category C.
  - Category C: witnesses who perform only ministerial functions or whom DJJ does not intend to call at the hearing and whose involvement and knowledge is set forth in a statement furnished to the child.
- Any statement by a person whose name is supplied above. A statement, in this case, is “a written statement made by said person and signed or otherwise adopted by him or her and also includes any statement of any kind or manner made by such person and written or recorded or summarized in any writing or recording,” and is intended to include all

police and investigative reports of any kind prepared in connection with the case, but not notes from which the reports are created.

- Any written or recorded statements and the substance of any oral statements made by the child, including a copy of any statements contained in police reports or summaries, along with the name and address of each witness to the statements.
- If there is a codefendant and the hearing is to be a joint hearing, any written or recorded statements and the substance of any oral statements made by the codefendant.
- If the child's case was the subject of a grand jury, any portions of the recorded grand jury minutes that contain testimony from the child.
- Any tangible papers or objects obtained from or belonging to the child.
- Whether DJJ received any materials or information from a confidential informant.
- If there has been electronic surveillance, including wiretapping, the DJJ must inform the child that it was used and of any conversations to which the child was a party; DJJ must also include in this any documents relating to the wireless surveillance.
- DJJ must inform the child whether there was any search or seizure and any documents relating to such.
- Reports or statements of experts made in connection with the child's case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.
- Any other tangible papers or objects DJJ intends to use in the hearing that were not obtained from or belonged to the child. Rule 8.060(a)(2)(A)-(K).

As soon as practicable after the delinquency petition is filed, DJJ must disclose to the child any information in the State's possession or control that tends to negate the guilt of the child as to the crime alleged. Rule 8.060(a)(3).

The court may order other discovery as justice may require. Rule 8.060(a)(5).

### **Required Disclosure to DJJ**

If a child has elected to participate and filed a "notice of discovery," the child has 5 days to make the following disclosures:

- A written list of all of the people the child expects to call as witnesses at the hearing.
- The child must serve a written discovery exhibit, which informs DJJ of the following, and allows DJJ to inspect, copy, test, and photograph any of the following information or material in the child's possession or control:
  - Statements from anyone the child expects to call as a trial witness (other than himself);
  - Reports or statements of experts made in connection with the child's case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons; and

- Any tangible papers or objects which the child intends to use in the hearing. Rule 8.060(b)(1)(A)-(B).

If DJJ files a protective order, the time provided above is automatically stayed. Rule 8.060(b)(3). If the order is granted, the child may, within 2 days of such, or before DJJ provides the information or material that is the subject of the protective order, withdraw the demand and not be required to furnish reciprocal discovery. Rule 8.060(b)(3).

### **Limitations**

Upon application by a party, the court may deny or limit disclosure if the court finds a substantial risk to anyone of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, which outweighs any usefulness of disclosure to the party attempting to disclose. Rule 8.060(c)(1). Anyone can move for an order denying or regulating disclosure of material; the court may consider the motion in camera. Rule 8.060(l)(1). However, certain information is not subject to disclosure, including:

- Legal research or of records, correspondence, or memoranda, to the extent that they contain the opinion, theories, or conclusions of the prosecuting or defense attorney or members of their legal staff.
- Disclosure of a confidential informant is not required unless the informant will be produced at a hearing, or failure to disclose the informant's identity will infringe on the child's constitutional rights. Rule 8.060(c)(2)(A)-(B).

On a showing of good cause, the court may order at any time that certain disclosures be restricted, deferred, or exempt from discovery; that certain matters are not to be examined; that the scope of a deposition is to be limited to certain things; or that a deposition is to be sealed and able to be opened only by court order. The court may also make any other appropriate order to protect a witness from harassment, unnecessary inconvenience, or invasion of privacy, including prohibiting the taking of a deposition. Rule 8.060(j). However, all material that a party is entitled to must be disclosed with sufficient time to permit the party to make beneficial use of the information. Rule 8.060(j).

### **Depositions**

No depositions are allowed in cases where the delinquency petition alleges only a misdemeanor or criminal traffic court violation when all other discovery provided by Rule 8.060 has been complied with, except where good cause can be shown to the trial court. Rule 8.060(d)(2)(I). In its determination of whether to allow depositions, the court should consider the consequences to the child, the complexity of the issues, the complexity of the testimony sought, and the other opportunities available to the child to disclose the information sought by deposition. Rule 8.060(d)(2)(I). The prohibition against taking depositions is not applicable if, following the furnishing of discovery by the child, DJJ takes the

statement of a listed defense witness pursuant to the State Attorney's power and authority to summon witnesses. Rule 8.060(d)(2)(I).

When permitted, depositions can be taken at any time after the filing of the delinquency petition, and any party may take a deposition of any person authorized by this rule. Rule 8.060(d)(1)(A). The court may, after notice to the parties, issue subpoenas for parties to be deposed. Rule 8.060(d)(2)(B).

Depositions of witnesses residing in the county where the adjudicatory hearing will take place must be taken in the building where the hearing is to take place, another location agreed to by the parties, or another location specified by the court. Rule 8.060(d)(1)(B). If the witness resides outside the county where the adjudicatory hearing will take place, the deposition must take place in a court reporter's office in the county where the witness resides, another location agreed to by the parties, or another location specified by the court. Rule 8.060(d)(1)(B). Any witness who refuses to obey a duly served subpoena may be adjudicated in contempt by the issuing court for such refusal. Rule 8.060(d)(5). Generally, witnesses can only be deposed once, with two exceptions: if the parties consent to multiple depositions or if the court orders a subsequent deposition on good cause shown. Rule 8.060(d)(2)(D).

The party taking the deposition should provide reasonable written notice to every other party and make a good faith effort to coordinate with the other parties and the witness to be deposed. The notice must state the time and location of the deposition, the name of each person being deposed, and a certificate of counsel that a good faith effort was made to coordinate the deposition schedule. Rule 8.060(d)(2)(A). After notice to the parties, the court may, after a showing of good cause, change the time or location of the deposition. Rule 8.060(d)(2)(C). The procedure for taking a deposition, including the scope of the deposition and use of a subpoena (other than a subpoena duces tecum), is analogous to the procedure described in the Florida Rules of Civil Procedure. Rule 8.060(d)(2)(E). Depositions of children under 16 years of age shall be videotaped on demand from a party unless otherwise ordered by the court. Rule 8.060(d)(9). The court may order the videotaping of a deposition of a witness of fragile emotional health. The court may also order the deposition of the fragile witness to be taken in the presence of a special magistrate or the trial judge. Rule 8.060(d)(9).

### **Bad Faith Depositions**

At any time during the taking of a deposition, on a motion by a party or by the person deposed, and on a showing that the deposition is being conducted in bad faith or in a manner designed to annoy, embarrass, or oppress the witness or a party, the court may:

- Terminate the deposition;
- Limit the scope and manner of the taking of the deposition;
- Limit the time of the deposition;

- Continue the deposition to a later date and time;
- Order the deposition to be taken in open court; and
- May impose any sanction authorized by Rule 8.060. Rule 8.060(k).

If the court order terminates the deposition, it can only be resumed by an order of the court. Rule 8.060(k). Upon the request of a party or witness, the deposition may be suspended for the time necessary to make a motion for an order. Rule 8.060(k).

### **Child's Presence at Deposition**

A child may not be present at a deposition except on stipulation of the parties or by an order of the court on a showing of good cause. Rule 8.060(d)(6). In making such an order, the court may consider the need for the physical presence of the child; the intimidating effect the child's presence may have on the witness; any cost or inconvenience that may result; and any alternative electronic means available to protect the child's ability to participate in discovery without being physically present. Rule 8.060(d)(6).

### **Witness' Presence at Deposition**

The ability to depose a witness depends on the *type of witness*.

- DJJ can, without leave of the court, take the deposition of any witness listed by the child.
- The child, without leave of the court, can take the deposition of any witness listed by DJJ as a "Category A" witness.
- The child can, without leave of the court, take the deposition of any unlisted witness who may have information relevant to the delinquency petition's allegations.
- No party can depose a witness listed by DJJ as a "Category B" witness, except by leave of the court.
- A "Category C" witness cannot be deposed by any party unless the court determines the witness should be listed in another category. Rule 8.060(d)(2)(F)-(H).
- Upon stipulation of the parties and consent of the witness, the statement of a law enforcement officer can be taken telephonically in lieu of a deposition. The statement must be recorded and can be used for impeachment purposes at trial. Rule 8.060(d)(7). Law enforcement officers shall be deposed without subpoena upon written notice of the deposition to the address designated by the law enforcement agency or, if no address is designated, to the address of the law enforcement agency 5 days before the date of the deposition. A law enforcement officer who fails to appear after such notice is subject to contempt proceedings. Rule 8.060(d)(8).

In determining whether a party may depose a "Category B" witness, the court should consider the consequences to the child, the complexity of the issues, the complexity of the testimony sought, and the other opportunities available to

the child to disclose the information sought by deposition. Rule 8.060(d)(2)(G). Upon request, the court must allow the child to make an ex parte showing of good cause for the taking of a deposition of a “Category B” witness. Rule 8.060(l)(2).

After the filing of a petition, upon application and subject to constitutional limitations, the court may, by directions as to time, place, and method, and on conditions that are just, require the child in all proceedings to:

- Appear in a lineup;
- Speak for identification by a witness to the offense;
- Pose for photographs not involving a reenactment of the offense;
- Try on articles of clothing;
- Permit the taking of material under the fingernails;
- Permit the taking of materials of the body, which involve no unreasonable intrusion, including blood and hair;
- Provide a handwriting sample; and
- Submit to a reasonable physical or medical inspection. Rule 8.060(f)(1).

The court may also order additional discovery as justice may require, on a showing that such discovery would be relevant or material. Rule 8.060(f)(2).

### **Order to Perpetuate Testimony**

After the filing of a petition and on reasonable notice, a party may apply for an order to perpetuate testimony. The application must be supported or verified by affidavits of credible people and must state that the witness lives beyond the court’s jurisdiction or may be unable to attend court proceedings, or that there are grounds to believe that the witness will absent him- or herself from the court’s jurisdiction; that the testimony is material; and that it is necessary to take the deposition to prevent a failure of justice. Rule 8.060(e)(1). If the application is done in a timely manner and is well-founded, the court must order a commission to be issued to take the deposition of the witness to be used in subsequent court proceedings. Rule 8.060(e)(2). The commission must state the time and place of the deposition and must be served on all parties. Rule 8.060(e)(2). The court must also order any designated books, documents, or tangible objects not privileged be produced at the time of the deposition. Rule 8.060(e)(2). The commission may be issued to any court reporter to transcribe the deposition and file it with the court. Rule 8.060(e)(2).

### **Subsequent Duty to Disclose**

If, subsequent to compliance with the rules of discovery, a party discovers a witness, evidence, or material that the party would have been under a duty to disclose or produce previously, the party must promptly disclose or produce such in the same manner as required by the rules for initial discovery. Rule 8.060(h).

### **Uses of Depositions**

Any deposition taken may be used at any hearing by any party for the purpose of impeaching the deponent. Rule 8.060(d)(3). If only part of the deposition is submitted into evidence by a party, an adverse party may include any other part of the deposition that in fairness ought to be considered with the part submitted, and any party can offer any part of the deposition into evidence. Rule 8.060(d)(4). However, no deposition may be read into evidence if the witness can attend the hearing. Rule 8.060(e)(3). Further, if it appears a deposed witness has absented him- or herself as a result of procurement, threats, or inducements by or on behalf of a party, the deposition may not be read into evidence on behalf of that party. Rule 8.060(e)(3).

### **Sanctions**

If at any time it is brought to the attention of the court that a party has failed to comply with the rules of discovery or an order issued pursuant to a rule of discovery, the court may:

- Order the party to comply with discovery request;
- Grant a continuance;
- Grant a mistrial;
- Prohibit a party from calling a witness not disclosed, or introducing material not disclosed; or
- Enter an order the court deems just under the circumstances. Rule 8.060(m)(1)(A)-(E).

If counsel or a party not represented by counsel willfully violates the rules of discovery or an order based on an applicable rule, that counsel or party not represented may be subject to appropriate sanctions by the court. Rule 8.060(m)(2). The sanctions may include but are not limited to contempt proceedings against the attorney or party not represented and an assessment of costs incurred by the opposing party when appropriate. Rule 8.060(m)(2).

### **Record**

A record shall be made of discovery proceedings. If the court enters an order granting relief after an in-camera inspection or after an ex parte showing, the complete record must be sealed and included in the records of the court and must be made available to the appellate court should there be an appeal. Rule 8.060(l)(3).



## Diversionary Programs

### **Generally**

Section 985.125 establishes that law enforcement agencies or school districts may establish pre- or post-arrest diversion programs with the cooperation of the state attorney. As a part of any diversion program, a child alleged to be delinquent may have to surrender his or her driver's license, or, if the child does not currently have a driver's license, refrain from applying for a driver's license for a period not exceeding 90 days. § 985.125(2). If the child fails to comply with the requirements of the diversion program, the state attorney may notify the Department of Motor Vehicles in writing and request the Department of Motor Vehicles to suspend the child's driver's license for a period not exceeding 90 days. § 985.125(2).

The process for entrance into a diversion program begins at intake. The Juvenile Probation Officer (JPO) serves as the primary case manager for the child. § 985.145(1). The JPO reviews any documents submitted as to probable cause and screens the child. § 985.145(1)(a)-(c). During screening, the JPO will determine whether the child is eligible for a diversion program, and if so, which program. § 985.145(1)(c). If the JPO determines that the child is eligible for a diversion program and that the program would be appropriate for the child, the JPO will refer the child to the selected program. § 985.145(1)(h). The law enforcement agency having jurisdiction over the offense and victim, if any, will be advised in writing of the recommendation that no petition be filed. The law enforcement agency and/or victim may submit, within 10 days of the receipt of the recommendation, a request for a special review by the state attorney's office as to whether a petition should be filed or retain the original recommendation of no petition, diversion. § 985.145(1)(i).

### **Teen Court**

The Teen Court concept was initially developed in 1967 when the President's Commission on Law Enforcement and Administration of Justice recommended reducing the role juvenile court took in handling juvenile offenders.<sup>2</sup> The originators of the teen court model reasoned that a system allowing teens to confront youthful delinquents about their behavior could have a powerful rehabilitative effect.<sup>3</sup> There are more than 1,150 Teen Courts operating nationwide.<sup>4</sup> It is estimated that, nationwide, between 110,000 and 125,000 teen offenders are involved in Teen Court every year.<sup>5</sup>

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<sup>2</sup> Seyfrit, C. L., Reichel, P. L., & Stutts, B. L. *Peer Juries as a Juvenile Justice Diversion Technique*. 18(3) Youth and Society 302 (1987).

<sup>3</sup> Weisz, V., Lott, R. C., & Thai, N. D. *A Teen Court Evaluation with a Therapeutic Jurisprudence Perspective*. 20 Behavioral Sciences and the Law 381 (2002).

<sup>4</sup> See <https://www.globalyouthjustice.org/resources/publications> for more information.

<sup>5</sup> Pearson, S.S. & Jurich, S. *Youth Court: A Community Solution for Embracing At-Risk Youth*. A National Update. Washington, D.C.: American Youth Policy Forum (2005).

There are 4 common Teen Court models. The Adult Judge Model allows teens to act in every role (prosecutor, defense, bailiff, clerk, and jury) with an adult presiding over the hearing.<sup>6</sup> The adult's role is minimal. The Peer Jury Model does not involve attorneys, but instead, the jury questions the offender directly, under the supervision of an adult judge; the jury is responsible for providing sanctions.<sup>7</sup> A third model is the Youth Judge Model, which resembles the Adult Judge model, except that a teen serves as the judge as opposed to an adult.<sup>8</sup> The fourth model is called the Youth Tribunal Model, wherein 3 or 4 teen judges question the offender and provide sanctions.<sup>9</sup> In this model, no jury or attorneys are present, although an adult is in the room to supervise the proceedings.<sup>10</sup> According to the Florida Association of Teen Courts, the 55 Florida teen courts all adhere to the Adult Judge Model.<sup>11</sup>

Teen Courts allow first-time offenders an opportunity to have their case heard by a jury of their peers. The jury evaluates the offense committed and provides appropriate sanctions.<sup>12</sup> According to the Federal Youth Court Database, the most commonly handled offenses are theft, assault, disorderly conduct, alcohol possession, vandalism, and possession of marijuana.<sup>13</sup> In terms of sanctions provided, juries include elements of community service, apology, written essays, teen court jury duty, substance abuse classes, and restitution.<sup>14</sup>

Teen Court has become a widely used diversion program because it encourages procedural justice. In multiple studies, the participants have demonstrated a greater understanding of the legal process, increased belief in the fairness of the teen court system, and increased belief in the trustworthiness of authority.<sup>15</sup> Additionally, the use of a teen court diversion program can reduce "secondary deviance" by reducing offenders' exposure to formal labeling by DJJ.<sup>16</sup> Qualified children are diverted to teen court and are not considered "delinquent," and thus have a decreased tendency to define themselves as "delinquent" and engage in further delinquent acts.<sup>17</sup> Additionally, teen court is primarily aimed at providing rehabilitative sanctions and diverting offenders

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<sup>6</sup> Godwin, T.M. *Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs*. Washington, DC: American Probation and Parole Association (1998).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See <https://floridateencourts.com/> for more information.

<sup>12</sup> *Supra* note 4.

<sup>13</sup> See [www.youthcourt.net](http://www.youthcourt.net) for more information.

<sup>14</sup> Butts, J.A., & Buck, J. *Teen Courts: A focus on research*. Juvenile Justice Bulletin (2000).

<sup>15</sup> Logalbo, A.P. and Callahan, C.M. *An Evaluation of Teen Courts as a Juvenile Crime Diversion Program*. Juvenile and Family Court Journal (Spring 2001); Wells, J. B., & Minor, K. I. *An Evaluation of Kentucky's Teen Court Programs*. 1995 (Unpublished manuscript, on file at Eastern Kentucky University).

<sup>16</sup> Dugas, D.M. *Is the Effectiveness of Teen Court Dependent on Gender?* 2006 (unpublished manuscript, on file at University of Maryland).

<sup>17</sup> Matsueda, R.L. (1992). *Reflected Appraisals, Parental Labeling, and Delinquency: Specifying a Symbolic Interactionist Theory*. 6 American Journal of Sociology 1577 (1992).

away from the juvenile justice system and toward something more conventional.<sup>18</sup> Procedural justice, label avoidance, and rehabilitative sanctions have been shown to decrease the likelihood of recidivism.<sup>19</sup>

Teen Courts are authorized under § 938.19 and may be administered by a nonprofit organization, a law enforcement agency, the court administrator, the clerk of the court, or another similar agency authorized by the board of county commissioners. § 938.19(6).

### **Civil Citations**

A civil citation is a statewide diversion option designed to provide an alternative to formal judicial handling for misdemeanor offenses. The civil citation process is “an efficient and innovative alternative to custody by the Department of Juvenile Justice...” § 985.12(1). Civil citations are designed to be used for children who commit non-serious delinquent acts and to ensure swift and appropriate consequences. § 985.12(1).

Any law enforcement officer, upon making contact with a child who has admitted to committing a non-serious delinquent act, may issue a civil citation. § 985.12(1). A copy of the citation issued must be sent to the county sheriff, the state attorney, the appropriate intake office of DJJ, the designated independent civil citation program, the parent or guardian of the offender, and the victim. § 985.12(2). The officer may assess community service hours to the child, payment of restitution, and require participation in intervention programs appropriate to the child, including family counseling, urinalysis monitoring, and substance abuse or mental health treatment, and program fees. § 985.12(2)(b)(4).

Once issued a citation, the child must report to the designated independent civil citation program within 7 business days of the date on the citation. § 985.12(4). The child’s civil citation data must be entered into the Juvenile Justice Information System Prevention Web within 7 days of the child’s admission into the civil citation program. The state attorney or operator of the independent civil citation program will advise the intake office once the child has completed the community service requirement. § 985.12(2)(g). If the child fails to comply with the terms of the civil citation, the law enforcement officer determines if there is good cause to arrest the child and refer the case to the state attorney to determine if prosecution is appropriate or allow the child to continue in the program § 985.12(2)(e).

The child may choose to refuse a civil citation – if he or she does refuse, the law enforcement officer will refer the offender to the intake office of DJJ. §

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<sup>18</sup> Povitsky, W. *Teen Court: Does it Reduce Recidivism?* 2005 (unpublished manuscript, on file at University of Maryland).

<sup>19</sup> *Supra* notes 14 and 17.

985.12(5). This option is available to the child at any time prior to the completion of the assigned community service. § 985.12(5).

### **Juvenile Substance Intervention Program**

A child who is charged with a felony of the second or third degree for the purchase of possession of a controlled substance (per chapter 893, Florida Statutes), tampering with evidence, solicitation for purchase of a controlled substance, or fraudulently obtaining a prescription, and who has not previously been adjudicated for a felony, is eligible for voluntary admission into a juvenile pretrial substance abuse intervention program, including a drug treatment court program. § 985.345(1)(a). The length of time of the program depends on the program requirements and the treatment services suitable to the child. § 985.345(1)(a).

Admission into a program can be requested at the motion of either party or by the court. § 985.345(1)(a). However, if the child allegedly committed a violation of the law and was involved in dealing and/or selling drugs or other controlled substances, the court must hold a preadmission hearing. § 985.345(1)(a). If at that hearing the state attorney shows (by a preponderance of the evidence) that the child was involved in the dealing or selling of controlled substances, the court must deny admission to a pretrial intervention program. § 985.345(1)(a).

While enrolled in a treatment program, the child is subject to a coordinated strategy developed by a drug court team. § 985.345(1)(b). The strategy may include, among other things, a means of sanctioning a noncompliant child. The sanctions may include placement in a substance abuse treatment center or time in secure detention. § 985.345(1)(b). Any strategy must be provided to the child in writing before he or she agrees to any pretrial intervention program. § 985.345(1)(b).

At the end of the intervention period, the court must consider the recommendations of the state attorney and pretrial diversion program coordinator as to the disposition of the youth. § 985.345(1)(c). The court must find, in writing, that either the child has successfully completed the pretrial intervention program or the child has not. § 985.345(1)(c). If the court finds that the child has not completed the pretrial program, the court may order the child to continue to attend an intervention program (if resources are available) or may order that the charges revert to normal delinquency procedures. § 985.345(1)(c). The court may dismiss the charges only if the court finds that the child has successfully completed the pretrial intervention program. § 985.345(1)(c).

### **Expunction**

A pre- or post-arrest diversion program may provide for the expunction of the non-judicial arrest record if the child successfully completes the program. § 943.0582(1). If the child's records are expunged, they may still be available to criminal justice agencies for determinations of eligibility in pre- or post-arrest diversion programs; they may also be available if the record is sought as part of a criminal investigation or making a prosecutorial decision under § 985.15. § 943.0582(2)(a)(1). However, for any other purpose, the child may legally deny or fail to acknowledge the arrest and charge of the expunged record. § 943.0582(2)(a)(1). To expunge a record, the child must:

- Successfully complete a pre- or post-arrest diversion program that expressly permits expunction to occur and is based on nonviolent misdemeanors that do not qualify as acts of domestic violence;
- Submit an application for diversion expunction, signed by the minor's parent or legal guardian or by the minor if he or she has reached the age of majority;
- Submit an official written statement from the state attorney certifying the completion of the program, and that the program was limited to minors arrested for nonviolent misdemeanors who have not been otherwise charged with or found to have committed any criminal offenses or comparable ordinance violations; and
- Have never, prior to applying for expunction, been charged with or found to have committed any criminal offenses or comparable ordinance violations. § 943.0582(3)(a)-(c).

Expunction of a charge does not prevent the child from petitioning for the expunction of a later criminal record, if the child is otherwise eligible. § 943.0582(6).

The Department of Law Enforcement can charge a seventy-five-dollar (\$75) processing fee for each request for expunction unless the fee is waived by the executive director. § 943.0515(2)(a).

## Domestic Violence Issues and Considerations in Delinquency Proceedings

### Statistics

In the United States, estimates show more than 10 million adults experience domestic violence annually.<sup>20</sup> Each year it is estimated that between 7 million and 14 million children<sup>21</sup> are exposed to violence against their mothers or female caretakers by other family members.

Research suggests that being battered is the most common factor among mothers of abused children. It has been estimated that 30 – 60% of children whose mothers are battered are themselves victims of abuse. Children living with an abused mother have been found to be 12 to 14 times more likely to be sexually abused than children whose mothers were not abused.<sup>22</sup> Abused mothers in domestic violence situations are also more likely to abuse their children – 8 times more likely than non-abused mothers.<sup>23</sup> In homes where there is domestic violence between parents, as many as 87% of children witness the abuse.<sup>24</sup>

In 2010, one study uncovered that 1 in every 15 children in the United States was exposed to reported intimate partner violence; this was an aggregate total of more than 5 million children.<sup>25</sup> According to the Florida Department of Law Enforcement (FDLE), 105,298 crimes of domestic violence were reported to Florida's law enforcement agencies in 2019.<sup>26</sup> From January 2019 to June 2020, a total of 68,916 domestic violence injunctions were filed in Florida.<sup>27</sup> Recently, due to pandemic-related lockdowns, the prevalence of domestic violence incidents has risen about 8.1% nationally.<sup>28</sup>

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<sup>20</sup> The National Coalition Against Domestic Violence citing Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J. & Stevens, M. *The national intimate partner and sexual violence survey: 2010 summary report*. (2011)

<sup>21</sup> Carlson, B.E. *Children exposed to intimate partner violence: Research findings and implications for intervention*. 1 Trauma, Violence, and Abuse 4, (2000).

<sup>22</sup> Swan, S.C., Gambone, L.J., Jennifer E. Caldwell, J.E., Sullivan, T.P., Snow, D.L., *A Review of Research on Women's Use of Violence with Male Intimate Partners*. 23 Victims and Violence 301 (2008) at 308.

<sup>23</sup> Goodmark, L. *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*. 102 W. Va. L. Rev. 237 (1999) at 241.

<sup>24</sup> *Id.*

<sup>25</sup> Hamby, S., Finkelhor, D., Turner, H. & Ormand, R., *Children's Exposure to intimate Partner Violence and Other Family Violence*. (2011). Retrieved from: <https://www.ojp.gov/pdffiles1/ojjdp/232272.pdf>.

<sup>26</sup> Florida Department of Law Enforcement., *Florida's County and Jurisdictional Reported Domestic Violence Offenses, 2019* (2019). Retrieved from:

[http://www.fdle.state.fl.us/FSAC/Documents/PDF/2019/DV\\_Jurisdiction\\_Offenses\\_2019.aspx](http://www.fdle.state.fl.us/FSAC/Documents/PDF/2019/DV_Jurisdiction_Offenses_2019.aspx)

<sup>27</sup> Florida Courts., *Trial Court Statistics Search*. Available for view at: [trialstats.flcourts.org](http://trialstats.flcourts.org).

<sup>28</sup> The National Commission on COVID-19 and Criminal Justice., *Impact Report: COVID-19 and Domestic Violence Trends*. (Feb 2021). Retrieved from: <https://covid19.counciloncj.org/2021/02/23/impact-report-covid-19-and-domestic-violence-trends/>

These statistics are based on reported incidents of domestic violence; however, domestic violence often goes unreported, so the prevalence can be greater than what research suggests.

## **The Effects of Domestic Violence on Children**

### **Domestic Violence and Juveniles**

Family violence can be more traumatic for children than street violence. The victims and perpetrators are most often the people the child knows intimately and depends on for protection, stability, and love.<sup>29</sup> There are various long-term effects that children can suffer resulting from exposure to domestic violence, including:

- Psychological problems such as withdrawal, hypervigilance, nightmares, anxiety, depression, low self-esteem, and shame<sup>30</sup>
- Physical symptoms including sleep disorders, headaches, diarrhea, ulcers, asthma, and depression
- Academic problems such as poor school performance, truancy, absenteeism, difficulty concentrating, and school failure<sup>31</sup>

There are also long-term effects of domestic violence, such as depression, eating disorders, and criminality. Additionally, a twelve-year study found that children exposed to violence were almost twice as likely to experience violence in their own adult relationships.<sup>32</sup>

### **Children Who Experience Domestic Violence and Juvenile Delinquency**

Children who witness domestic violence but are not directly abused themselves suffer similar levels of distress as those children who are directly abused by a parent.<sup>33</sup> Domestic violence can be witnessed by children in various ways. Children may directly witness abuse visually or hear the abuse occurring while not being in the room<sup>34</sup>. For example, a child may hear verbal threats, property damage, or the abused parent being battered. Children who experience domestic violence in their homes have higher risks of post-traumatic stress

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<sup>29</sup> *How Does Exposure to Violence Affect Very Young Children?* The Harvard Mental Health Letter, vol. 11, No. 7 January 1995.

<sup>30</sup> Edleson, J., et. al., *Assessing Child Exposure to Adult Domestic Violence*. Children and Youth Services Review 2 (2007) citing Carlson, B. E., *Children exposed to intimate partner violence: Research findings and implications for intervention*. 1 Trauma, Violence, and Abuse 4, (2000).

<sup>31</sup> Id.

<sup>32</sup> Holt, S., Buckley, H., & Whelana, S., *The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature*. 32 Child Abuse and Neglect 797 (2008) at 803.

<sup>33</sup> Bancroft, L., et. al., *The BATTERERS As Parent: Addressing the Impact of Domestic Violence on Family Dynamics* 47 (2<sup>nd</sup> ed. 2012)

<sup>34</sup> *The Effects of Domestic Violence on Children*, Domestic Violence Roundtable, available at: <http://www.domesticviolenceroundtable.org/effectsonchildren.html>

disorder and substance abuse.<sup>35</sup> Social and behavioral problems can develop, such as the inability to form trusting relationships and exhibiting aggressive or violent behavior. An exposed child is more likely to be physically aggressive toward others in the community and is eighteen times more likely to be physically aggressive toward his or her parents. Consequently, witnessing domestic violence has become a predictor of juvenile delinquency.<sup>36</sup>

The likelihood of delinquency is greater as a child searches for a sense of power, safety, and worth.<sup>37</sup> Examples of juvenile behavior that may result from witnessing violence are gang membership and parental battery.<sup>38</sup> Gangs can act as a surrogate family for their members, many of which who have grown up without a strong family unit, including those children who are raised in abusive homes.<sup>39</sup> Additionally, children who witness violence can emulate the behavior of abusers and become abusive toward their victim parent or may attack a perpetrator parent in defense of the abused parent.<sup>40</sup> Consequently, children who experience domestic violence can often be involved in the juvenile delinquency system.

### **How to Ascertain Whether Domestic Violence May be Present**

Domestic violence can be difficult to detect. Often it goes unreported due to the pervasive fear that it will lead to the removal of the child. If the court has not been notified of the existence of domestic violence in the home, children may still provide the court with behavior indicators that there might be domestic violence in the home. Additionally, abusers can display aggressive behaviors that can alert the court to domestic violence. The presence or absence of such signs does not necessarily correlate with the presence or absence of domestic violence; however, they are signs that domestic violence may be present, and courts should take the opportunity to examine the circumstances closely for domestic violence.

Children might display several cues that they may be living with some form of violence. Some of these cues have been mentioned above; however, the National Council of Juvenile and Family Court Judges (NCJFCJ) created a judicial checklist for children who may be exposed to violence. Cues on this checklist include:

- Physical violence towards animals or people

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<sup>35</sup> Phipps, C., *Children, Adults, Sex, and Criminal Law: In Search of Reason*, 22 Seton Hall Legis. J. 1, 83-84- (1997)

<sup>36</sup> *Supra* Note 11.

<sup>37</sup> See Walters, A. C., *The Forgotten Children: Victims of Domestic Violence, Victims of the System*, 12(2) Alb. Gov't L. Rev. 286 (2018)

<sup>38</sup> *Id.*; Darnell, D., *Specialty Juvenile Courts in Texas: Using Rehabilitative Juvenile Justice Approach to Reform Texas's Youngest Gang Members*, 44 St. Mary's L.J. 715, 742 (2013).

<sup>39</sup> *Supra* Note 18; Truman, D. R., *The Jets and Sharks are Dead: State Statutory Responses to Criminal Street Gangs*, 73 Was. U. L. Rev. 683, 704-05 (1995)

<sup>40</sup> *Supra* Note 14.



- Aggressive behavior
- Substance abuse or alcohol abuse
- Difficulty paying attention
- Withdrawn or absence of emotion
- Anxiety or hypervigilance
- Risk-taking behaviors
- Problems in school
- Difficulty with peer relationships <sup>41</sup>

Generally, abusive parties may have the following characteristics when they appear in court:

- Authoritarian demeanor or parenting style
- Under-involved in family members' lives
- Considering themselves superior in all aspects of family life
- Placing little to no value on abused party's abilities
- Continuous criticism of abused party <sup>42</sup>

Additionally, there are some behavioral signals that abusive parties may display including:

- Claiming the other party is stupid or inflexible
- Angering easily
- Attempting to portray him/herself as the true victim
- Attempting to engender sympathy with the court
- An unwillingness to understand another's perspective
- Advocating or adhering to strict gender roles
- Patronizing the other party, counsel, or the court
- Attempting to create an alliance with the court
- Minimizing, denying, blaming the other party for, or excusing inappropriate behavior <sup>43</sup>
- Speaking more than seventy-five percent (75%) of the time <sup>44</sup>

Abused parties will also display signs the court should look out for. These behaviors include:

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<sup>41</sup> National Council of Juvenile and Family Court Judges, *A Judicial Checklist for Children and Youth Exposed to Violence*. (2006) at 2.

<sup>42</sup> Jonathon W. Gould, David A. Martindale, Melisse H. Eidman. *Assessing Allegations of Domestic Violence*. 4 Journal of Child Custody 1(2007) at 30.

<sup>43</sup> *Supra* note 22 at 9.

<sup>44</sup> Alexandria Zylstra. *Mediation and Domestic Violence: A Practical Screening Method for Mediators and Mediation Program Administrators*. 2001 J. Disp. Resol. 253 (2001) at 275.

- Difficulty presenting evidence (perhaps from fear, abuse, or the belief that she/he will not be believed)
- Inappropriate response resulting from fear, depression, stress, or other abuse
- Anxious or unfocused in the presence of the abusive party
- Aggressive or angry when testifying
- Stress or duress when other party is testifying
- Appearing numb, disinterested, or unaffected<sup>45</sup>

If a child is or may be a victim of domestic violence, the court must report any knowledge or suspicion of abuse to the Department of Children and Families.<sup>46</sup> A judge making a report must include his or her name; this information is confidential and exempt except for as provided in § 39.202.<sup>47</sup>

### **The Link Between Animal Abuse and Interpersonal Violence**

The link between animal abuse and family violence has been the subject of recent articles and studies; however, the belief that there is a correlation between how a person treats animals and how she or he treats people has a much longer history.<sup>48</sup> A common tactic of power and control used by domestic violence perpetrators is the use of threats to harm or kill family pets.<sup>49</sup> In fact, 48% of battered spouses or partners delay seeking help or leaving in abusive situations due to fear for their pets' safety.<sup>50</sup>

Animal cruelty is a clear sign of domestic violence. One study found that "women residing at domestic violence shelters were nearly 11 times more likely to report that their partner had hurt or killed pets than a comparison group of women who said they had not experienced intimate violence."<sup>51</sup> Both the American Humane Association and the Animal Legal Defense Fund point to a link between domestic violence and animal abuse. As the Animal Legal Defense Fund puts it: "People who hurt animals don't stop with animals."<sup>52</sup>

### **The Link Between Animal Abuse, Child Abuse, and Juvenile Delinquency**

There are several parallels between the origins of violence to animals and children. Since many family members have close bonds with pets, these

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<sup>45</sup> *Supra* note 22 at 10.

<sup>46</sup> § 39.201(1)(a).

<sup>47</sup> § 39.201(1)(b).

<sup>48</sup> DeViney, E., Dickert, J. & Lockwood, R. (1983) *The Care of Pets Within Child Abusing Families*.

<sup>49</sup> Ascione, F. R., Weber, C. V., Thompson, T. M., Heath, J., Maruyama, M., & Hayashi, K. (2007). *Battered pets and domestic violence animal abuse reported by women experiencing intimate violence and by nonabused women*. *Violence Against Women*, 13(4), 354-373, at 361.

<sup>50</sup> Carlisle-Frank, P., Frank, J. M., & Nielsen, L. (2004). *Selective battering of the family pet*. *Anthrozoös*, 17, 26-42.

<sup>51</sup> *Supra* note 30 at p. 365.

<sup>52</sup> <https://aldf.org/article/the-link-between-cruelty-to-animals-and-violence-toward-humans-2/>

animals can become the targets of abuse intended to hurt a person.<sup>53</sup> Animal abuse by a perpetrator is often used as intimidation and/or manipulation and may be an indicator of domestic violence against both adults and children residing in the home.

Children who abuse animals may also be experiencing domestic violence in their own homes. Although not all child victims of domestic violence go on to commit acts of violence, many do. Approximately 32% of children exposed to domestic violence engage in animal cruelty.<sup>54</sup> A retrospective record review of juvenile delinquency data for a population of 81,171 juveniles who were referred to juvenile justice in the state of Florida between December of 2004 and December of 2015 concluded that cruelty to animals may be a marker or “red flag” of family violence.<sup>55</sup> Of the youth who engaged in animal cruelty, eighty percent of them had experienced household violence, and fifty percent of the youth experienced physical violence.<sup>56</sup>

Some research suggests that there are several motives for cruel and extremely aggressive behaviors towards animals, including:

- The desire to control an animal or shape an animal’s behavior
- To express violence, aggressive behaviors through an animal toward other people or animals
- To retaliate against other people
- To displace hostility from a person to an animal<sup>57</sup>

The results of a systematic review of animal cruelty and delinquent behavior found that animal cruelty is correlated to various types of offenses such as robbery or mugging, vandalism, violent offenses, serious property offenses, shoplifting, harassment, and forcing someone to engage in sexual acts.<sup>58</sup> The correlation between interpersonal violence and animal abuse can also lead to further delinquent behaviors.

## **Best Practices in Delinquency Cases**

### **Suggested Guidelines for the Court**

Domestic violence may present itself at any point throughout a delinquency proceeding, and the courts should ensure that the abused parties have access

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<sup>53</sup> *Supra* note 29 at p. 328.

<sup>54</sup> Bright, Melissa A. et al. (2018). *Animal cruelty as an indicator of family trauma: Using adverse childhood experiences to look beyond child abuse and domestic Violence*. Available at:

<https://www.lucysproject.com/here/wp-content/uploads/Animal-cruelty-as-an-indicator-of-family-trauma.pdf>

<sup>55</sup> *Id.* at p. 294.

<sup>56</sup> *Id.* at p. 291.

<sup>57</sup> Longabardi, C., Badenes-Ribera, L., *The relationship between animal cruelty in children and adolescent and interpersonal violence: A systemic review*, *Aggression and Violent Behavior* 46, p. 201-211 (2019).

<sup>58</sup> *Id.* at 207.

to support resources so they may develop plans to reduce or eliminate the dangers of domestic violence.<sup>59</sup> The courts must consider each child's situation in context and in light of what is helpful and safe for individual family members.<sup>60</sup> It is important to avoid automatically referring a juvenile to a standard set of processes and services;<sup>61</sup> instead, try to determine which interventions are appropriate for each youth based on the specific characteristics or patterns of violence.<sup>62</sup>

### **Confidentiality Considerations**

The delinquency court is responsible for a large volume of sensitive information. When making decisions and policies about information disclosure, it is important for the court to balance two needs:

- The need for information required to prove the occurrence of child maltreatment and to keep children safe
- The need of battered parties to keep information confidential to maintain and plan effectively for their safety<sup>63</sup>

The court should carefully protect certain victim information, including the victim's safety and plan and the victim's current address.<sup>64</sup> In the event that victims are asked to waive their privilege regarding confidential information, verify that the victim understands the implications of such a waiver.<sup>65</sup>

A person who has been battered may be apprehensive to admit that they have been a victim of abuse and may try to hide it due to fear, shame, or embarrassment.<sup>66</sup> The earlier signs of abuse or coercive control are recognized in a case, the sooner a plan to create a safe environment for the child and or victim can be implemented.<sup>67</sup>

### **The Child as the Abuser**

When a child is the alleged abuser of domestic violence and does not meet the criteria for detention, § 985.255 states the child may be able to still be placed in detention if the court makes specific findings that:

- Respite care for the child is not available <sup>68</sup>

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<sup>59</sup> Schechter, S., Edleson, J., *et al. Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*. National Council of Juvenile and Family Court Judges (1999) at 22.

<sup>60</sup> Ver Steegh, N., Dalton, C. *Report from the Wingspread Conference on Domestic Violence and Family Courts*. (2007) at 17.

<sup>61</sup> *Id.* at 16.

<sup>62</sup> *Id.* at 16.

<sup>63</sup> <sup>63</sup> *Supra* note 40 at 42.

<sup>64</sup> *Id.* at 43.

<sup>65</sup> *Id.* at 44.

<sup>66</sup> Bowles, J., *et al A Judicial Guide to Child Safety in Custody Cases*. National Council of Juvenile and Family Court Judges (2008) at 20.

<sup>67</sup> *Id.* at 19.

<sup>68</sup> s. 985.255(2)(a), F.S

- It is necessary to place the child in secure detention to protect the victim from injury

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or the victim requests secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or § 985.26.<sup>69</sup>

### **Duty to Report Checklist**

If a child is or may be a victim of domestic violence, the court must report any knowledge or suspicion of abuse to the Department of Children and Families.<sup>70</sup> A judge making a report must include their name. This information is confidential and exempt except as provided in § 39.202. The following is a checklist to navigate the duty to report.

### **What Must Be Reported**

Child abuse of any kind must be reported to the Department of Children and Families. This includes:

- A child in need of supervision who has no parent, legal custodian, or responsible adult.<sup>71</sup>
- A child abused by his or her parent, caregiver, guardian, or other person responsible for the child's welfare.<sup>72</sup>
- Child abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare.<sup>73</sup>
- Childhood sexual abuse or victim of a known or suspected juvenile sex offender.<sup>74</sup>

NOTE: If the report contains information of an instance of known or suspected child abuse involving the impregnation of a child under the age of 16 years of age by a person 21 years of age or older, the report shall be made immediately to the appropriate county sheriff's office or other appropriate law enforcement agency.<sup>75</sup>

### **Who Do You Report the Abuse To?**

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<sup>69</sup> § 985.255(2)(b).

<sup>70</sup> §§ 39.201(1)(b); 39.201(1)(d)(7).

<sup>71</sup> § 39.201(1)(a).

<sup>72</sup> *Id.*

<sup>73</sup> § 39.201(1)(b).

<sup>74</sup> § 39.201(1)(c).

<sup>75</sup> § 39.201(2)(e).

Child Abuse should be reported to the Florida Department of Children and Families through either the statewide hotline (1-800-962-2873) or through the DCF website at <http://reportabuse.dcf.state.fl.us>. The hotline also accepts faxes at 1-800-914-0004 and web-based chats on their website.<sup>76</sup>

If the abuse is by an adult other than a parent, legal custodian, caregiver, or another person responsible for the child's welfare, the report will be transferred by hotline staff to the appropriate county sheriff's office.<sup>77</sup>

If the alleged abuse is by a juvenile or involves a child who is in the custody or protective supervision of the department, the report shall be transferred by the hotline to the county sheriff's office.<sup>78</sup>

Failure to report child abuse to the Department of Children and Families is a third-degree felony.<sup>79</sup>

### **Conducting a Delinquency Hearing When Domestic Violence is Present**

Promoting a culture of patience and courtesy ensures that all parties are treated with dignity and respect.<sup>80</sup> The following are examples on how to encourage this culture in the courtroom:

- Insist that any attorneys present treat all parties with respect. If the abusive party's attorney is allowed to be disrespectful toward the opposing party or any witnesses, that behavior serves to empower the abusive party and can thereby increase the safety threat to the at-risk party.
- Because the at-risk party may need additional time to answer questions, insist that each party is given adequate time to respond.
- Insist that counsel maintain a respectful distance from the witness.
- Warn the parties and counsel against the use of sarcastic or other disrespectful remarks or tone.
- Consider imposing sanctions for the continued use of disrespectful tone, remarks, or tactics.
- Watch out for and intervene to stop any controlling non-verbal behavior by one party toward the other.<sup>81</sup>

### **Safety Focused Best Practices**

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<sup>76</sup> § 39.201(2)(a).

<sup>77</sup> § 39.201(2)(b).

<sup>78</sup> § 39.201(2)(c)1.

<sup>79</sup> § 39.205(1).

<sup>80</sup> *Supra* note 47.

<sup>81</sup> Lyon, T., Mechanic, M. *Domestic Violence and Child Protection: Confronting the Dilemmas in Moving From Family Court to Dependency Court*. Handbook on Children, Culture, and Violence (N. Dowd, D. Singer, & R.F. Wilson 2005) at 13.

To ensure safety during the hearings when there is suspicion that one party has been controlled by another party:

- Keep the parties physically separate in the waiting area and in the courtroom to ensure that there is no communication between the parties.
- Consider using a victim advocate in the courtroom to provide support the abused party.<sup>82</sup>

Also, remember that the at-risk party may be re-traumatized by the presence of the abusive party, which may affect their testimony and whether it will be presented.<sup>83</sup>

### **Drafting Orders**

Generally, orders should be drafted with the following three goals in mind:

- Keeping the victim safe
- Identifying the service needs of the child, including all forms of assistance and help
- Rehabilitation and accountability of the perpetrator<sup>84</sup>

The court should take sufficient time to examine each case carefully and regularly review each case to ensure that court orders are carried out by DJJ, DCF, or other service providers.<sup>85</sup> Set a date in a few months to review compliance and any difficulties that the child might be experiencing.<sup>86</sup>

It is also important to avoid drafting orders that mandate a large portion of time between the victim and the perpetrator of violence. Promoting parent-child contact where parties are prone to become physically violent may create opportunities for renewed domestic violence.<sup>87</sup>

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<sup>82</sup> Office of the State Courts Administrator, *Florida's Domestic Violence Benchbook* (2020) at 1-53

<sup>83</sup> *Supra* note 62.

<sup>84</sup> *Supra* note 40 at 107.

<sup>85</sup> *Supra* note 40 at 101.

<sup>86</sup> *Supra* note 62 at 34.

<sup>87</sup> Jaffe, P., Johnston, J., Crooks, C., Bala, N., *Custody Disputes Involving Allegations of Child Abuse: Toward a Differentiated Approach to Parenting Plans*. 46 Family Court Review 500 (2008) at 502.

## Evidence Issues

### **Investigatory Stops versus Consensual Encounters**

There is a marked difference between consensual encounters and investigatory stops. A consensual encounter is one in which the citizen is under no obligation to comply with the officer's requests and may freely ignore the requests and leave at any time.<sup>88</sup> As such, no constitutional safeguards are invoked.<sup>89</sup> An investigatory stop, on the other hand, is made based on well-founded, articulable suspicion.<sup>90</sup> At this level, the police officer can reasonably detain the citizen temporarily to ascertain whether any violations of law have or are about to occur.<sup>91</sup> Constitutional protections such as the 4th amendment are involved in investigatory stops.<sup>92</sup>

A determination as to whether a stop was consensual or investigatory revolves around the question of whether a child would reasonably feel free to disregard the police and leave.<sup>93</sup> Such a determination could depend on factors surrounding the stop such as the "threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled."<sup>94</sup> Where a police officer does not ask whether a child minds talking to him or her and answering questions but instead uses words of compulsion to order a child to engage with the police officer, the encounter is not consensual but is instead investigatory.<sup>95</sup>

In determining whether a stop was consensual or investigatory, examine whether, under a totality of the circumstances, a reasonable person would have felt at liberty to ignore the police presence and go on with his or her business.<sup>96</sup> Where evidence was seized under a stop determined to be investigatory rather than consensual, verify that the police officer had the appropriate reasonable suspicion to perform the stop.

### **Body Searches**

It has been well-established that a lawfully arrested person can be searched without the need for a search warrant.<sup>97</sup> However, where a person has not been lawfully arrested but is instead only detained by the police in an investigatory stop, the ability to search the detained person is severely limited. Under

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<sup>88</sup> *Popple v. State*, 626 So. 2d 185 (Fla. 1993).

<sup>89</sup> *Id.* at 186.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *P.W. v. State*, 965 So. 2d 1197 (Fla. 4th DCA 2007) at 1199.

<sup>94</sup> *United States v. Mendenhall*, 446 U.S. 544 (1980) at 554.

<sup>95</sup> *D.G. v. State*, 714 So. 2d 644 (Fla. 4th DCA 1998) at 646.

<sup>96</sup> *Caldwell v. State*, 985 So. 2d 602 (Fla. 2d DCA 2008) at 606.

<sup>97</sup> *United States v. Robinson*, 414 U.S. 218 (1973).



Florida's Stop and Frisk Law, § 901.151, a law enforcement officer may perform a very limited search of the person only when the officer has probable cause to believe that the person is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person. The limited search may not initially go beyond a "pat down."<sup>98</sup> Only if the officer feels an object he or she reasonably believes to be a weapon may the officer seize the object.<sup>99</sup> Courts have held it to be unreasonable for a police officer, with no basis for suspecting the youth had a weapon, to perform a weapons search when the officer has not performed a pat down first.<sup>100</sup> Even when a child puts a hand in a pocket in non-compliance with an order to show both hands, the Stop and Frisk Law only permits a pat down search, after which a weapon, if found, may be seized.<sup>101</sup>

### **Vehicle Searches**

Where a person voluntarily consents to a search of his or her vehicle, the search must be done within the constraints of that consent.<sup>102</sup> The measure of the consent – and what precisely it contains – can be determined by a test of objective reasonableness: what an ordinary reasonable person would have understood to be the scope of consent by the exchange between the officer and the consenting person.<sup>103</sup> Where consent is given but limited due to a locked container, and after a request by the police for the container to be open was denied, the consent is effectively limited, by denial, to exclude the locked container.<sup>104</sup>

When a person has been arrested, a vehicle can be searched as a contemporaneous incident to the arrest.<sup>105</sup> However, this ability is not unlimited. While the arrested person does not need to be in the vehicle at the time of arrest and search, he or she does need to be in "close proximity, both temporally and spatially" to the vehicle.<sup>106</sup> The rationale for a search when the arrested person is in close proximity to the vehicle is that the arrested person is still able to destroy evidence in the vehicle and/or lunge for a weapon<sup>107</sup>, making a search of the vehicle a safety precaution as well as an evidence preservation method. However, the ability to search the vehicle hinges on the proximal time and distance the vehicle is from the suspect. Where an arrestee is 30-60 feet from the vehicle, after a 35-minute lapse from the time the

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<sup>98</sup> *D.B.A. v. State*, 962 So. 2d 406 (Fla. 2d DCA 2007) at 407.

<sup>99</sup> *Id.*

<sup>100</sup> *L.C. v. State*, 23 So.3d 1215 (Fla. 3d DCA 2009).

<sup>101</sup> *Supra* note 11.

<sup>102</sup> *Davis v. State*, 594 So. 2d 264 (Fla. 1992) at 266 (quoting *United States v. Blake*, 888 F. 2d 795 (11th Cir. 1989) at 800).

<sup>103</sup> *J.J.V. v. State*, 17 So. 3d 881 (Fla. 4th DCA 2009) at 884 (quoting *Florida v. Jimeno*, 500 U.S. 248, (1991) at 251).

<sup>104</sup> *Id.* at 885-886.

<sup>105</sup> *Thornton v. United States*, 541 U.S. 615 (2004) at 617.

<sup>106</sup> *Id.* at 619.

<sup>107</sup> *Id.* at 621.

arrestee exited the vehicle, and the arrestee no longer has keys to the vehicle, the arrestee is no longer in close proximity, neither spatially nor temporally, to the vehicle.<sup>108</sup> As such, the search of the vehicle incident to the arrest would render any evidence found as inadmissible under that theory.

### **Standards in a School Setting**

In particular, standards for searches in a school setting are unique to delinquency courts. In a school setting, the standard for conducting a warrantless search is different than the standard needed outside of school. Outside of school, the standard is probable cause; inside the school, the law enforcement officer needs only to have reasonable or founded suspicion.<sup>109</sup> Further, this reasonable suspicion is considered from the viewpoint of a reasonable officer with the actual officer's training and experience.<sup>110</sup> The reasonable suspicion must be based on "specific and articulable facts that, when taken together with the rational inferences from those facts, reasonably warrant the intrusion."<sup>111</sup> A "hunch" or "intuition" alone is an insufficient basis for a "reasonable suspicion" upon which a warrantless search relies.<sup>112</sup> If an officer is justified in ordering a juvenile to empty his or her pockets, such an order is equivalent, for 4th amendment purposes, to the officer searching the juvenile by reaching inside the juvenile's pockets.<sup>113</sup>

### **Weapons Issues**

Section 790.001(13) defines a weapon as any "dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife." Common pocketknives are described in case law as a knife with a blade that can be folded into the handle, that is carried in the closed position, and that has no weapon-like characteristics (hilt guard or notched grip, for example).<sup>114</sup>

A deadly weapon is defined as an item that, if used in the ordinary manner contemplated by its design, is likely to cause serious bodily harm or death.<sup>115</sup> Whether the item is a deadly weapon is a factual question determined by considering size, material, and the manner in which it was used or could be

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<sup>108</sup> *A.T.P. v. State*, 973 So. 2d 650 (Fla. 2d DCA 2008) at 653.

<sup>109</sup> *R.B. v. State*, 975 So. 2d 546 (Fla. 3d DCA 2008) at 547.

<sup>110</sup> *Id.* at 548.

<sup>111</sup> *C.G. v. State*, 941 So. 2d 503 (Fla. 3d DCA 2006) at 504.

<sup>112</sup> *C.A. v. State*, 977 So. 2d 684 (Fla. 3d DCA 2008) at 686.

<sup>113</sup> *Supra* note 22 at 548.

<sup>114</sup> See *J.R.P. v. State*, 979 So. 2d 1178 (Fla. 3d DCA 2008) for an example.

<sup>115</sup> *J.W. v. State*, 807 So. 2d 148 (Fla. 2d DCA 2002) at 149.

used.<sup>116</sup> Several example cases have demonstrated the analysis the courts engage in when determining whether an object is a “deadly weapon.”<sup>117</sup>

As discussed above, when a law enforcement officer has probable cause to believe a child may be carrying a dangerous weapon, that officer may engage in a limited search called a “pat down” to determine if the child is, in fact, carrying a dangerous weapon.<sup>118</sup> Only if the officer feels an object that he or she reasonably believes to be a dangerous weapon may he or she seize the weapon.<sup>119</sup>

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<sup>116</sup> *Simmons v. State*, 780 So. 2d 263 (Fla. 4th DCA 2001) at 265.

<sup>117</sup> See *D.B.B. v. State*, 997 So. 2d 484 (Fla. 2d DCA 2008) (a bicycle thrown 10 feet from the intended victim that only traveled 5 feet was not a deadly weapon); *E.J. v. State*, 554 So. 2d 578 (Fla. 3d DCA 1989) at 579 (determining that a skateboard thrown at a vehicle was not a deadly weapon); *Forchion v. State*, 214 So. 2d 751 (Fla. 3d DCA 1968) at 752 (finding that a two foot long part of a broom handle thrown from twelve to fifteen feet away was not a deadly weapon); *Rogan v. State*, 203 So. 2d 24 (Fla. 3d DCA 1967) at 25 (concluding that a one-foot diameter flower pot filled with dirt, which was thrown through the window of a residence, did not qualify as a deadly weapon where the victim was seated five feet from the window).

<sup>118</sup> *Supra* note 11.

<sup>119</sup> *Id.*

## Immigration Issues

Juvenile adjudications of delinquency are not, for the purposes of the Immigration and Naturalization Act (INA), considered “convictions.”<sup>1</sup> As most of the provisions in the INA’s Deportable Alien section (8 CFR 1227) are triggered only where there is a conviction, adjudications of delinquency do not often result in contact with Immigration and Naturalization Service (INS).

However, there are certain offenses in §1227 that do not require a conviction to render a noncitizen juvenile deportable. These offenses include:

- Any alien who is, or at any time after admission has been, a drug abuser or addict, 8 CFR 1227(a)(2)(B)(ii);
- Any alien who, at any time after admission, is enjoined under a valid protection order and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued, 8 CFR 1227(a)(2)(E)(ii);
- Any alien who engages in or attempts to engage in human trafficking, or who has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, 8 CFR 1227(a)(2)(F);
- Any alien who falsely represents or has falsely represented himself/herself to be a citizen of the United States for any purpose or benefit under this chapter or any Federal or State law, 8 CFR 1227(a)(3)(D); and
- Any alien who has engaged, is engaged, or at any time after admission engages in espionage, sabotage, or any other crime that endangers public safety or national security. 8 CFR 1227(a)(4)(A).

Furthermore, an adjudication of guilt may result in deportation even if it did not stem from one of the above offenses. If the disposition ordered for the child includes a substantial period of time in the custody of DJJ, a noncitizen juvenile may be deportable. Additionally, if a noncitizen juvenile is determined to be incompetent and is ordered into DCF’s custody for a substantial period of time, the juvenile may be deportable. Section 1227(a)(5) says, “any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry...” Public charge has been defined as becoming primarily dependent on the government for subsistence, as demonstrated by receipt of public assistance, or institutionalization for long-term care at government expense.<sup>2</sup>

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<sup>1</sup> *In re Devison*, 22 I&N Dec. 1362 (BIA 2000).

<sup>2</sup> U.S. Citizenship and Immigration Services. *Questions and Answers: Public Charge*. US Department of Homeland Security (May, 1999), available at [http://www.uscis.gov/files/article/public\\_cqa.pdf](http://www.uscis.gov/files/article/public_cqa.pdf).

As a result, there are circumstances where a noncitizen juvenile may not be fully aware of the consequences of a possible nolo contendere or guilty plea. Thus, the court may include in its colloquy that is provided prior to determining the voluntariness of a nolo contendere or guilty plea a short statement about the possibility of deportation for certain acts or consequences, as indicated in the Arraignment Hearing Section.

## **Interpreters for Limited-English-Proficient or Non-English-Speaking Persons**

The court will often be presented with individuals who cannot communicate proficiently in English. It may be that the individual does not speak English at all or speaks limited English insufficient for court communications. In situations such as these, the court must be able to identify the communication barriers, determine the best method for surmounting the obstacle, and provide an individual or service capable of resolving the problem.<sup>3</sup>

### **Identify Need for Interpreting Services**

The first thing the court must do is identify that a communication problem exists. It may be the case that the person in need of services requests interpreter services, or a non-court personnel initially determines that an interpreter is needed and communicates such to the court.<sup>4</sup> However, the court may not have any indication that interpreter services are required until the person in need of services is in the courtroom during a court proceeding. In whatever manner the court learns of the need for services, once the need is identified, the court must determine whether and what type of interpreter service is required.

Fla. R. Gen. Prac. & Jud. Admin. 2.560 specifies the circumstances in which the appointment of an interpreter is required.<sup>5</sup> When the proceeding is a criminal or juvenile delinquency proceeding, and the person in need of services is the accused or the parent or legal guardian of the accused juvenile, the court must appoint an interpreter for that person.<sup>6</sup> If the victim or alleged victim has a limited understanding of English or cannot express himself or herself sufficiently to be understood, the court must appoint an interpreter.<sup>7</sup> In all other proceedings, an interpreter for a litigant in need of interpreting services must be appointed if the court determines “that the inability to understand English deprives the litigant of an understanding of the court proceedings, that a fundamental interest is at stake (such as in a civil commitment, termination of parental rights, paternity, or dependency proceeding), and that no alternative to the appointment of an interpreter exists.”<sup>8</sup> Finally, in any proceeding where a witness is the person in need of services, the appointment

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<sup>3</sup> Commission on Trial Court Performance and Accountability, *Recommendations for the Provision of Court Interpreting Services in Florida’s Trial Courts*. DRAFT (2010) at 10.

<sup>4</sup> *Id.* at 11.

<sup>5</sup> Fla. R. Gen. Prac. & Jud. Admin. 2.560, hereinafter referred to as “Rule 2.560.”

<sup>6</sup> Rule 2.560(a).

<sup>7</sup> *Id.*

<sup>8</sup> Rule 2.560(b).

of an interpreter is governed by the applicable provisions of the Florida Evidence Code.<sup>9</sup>

**In making determinations regarding the appointment of an interpreter, the requirements of Title VI of the Civil Rights Act of 1964 are enforced as to spoken language interpreters in Florida through Rule 2.560(d). Whenever possible, a certified or other duly qualified interpreter, as defined in the Rules for Certification and Regulation of Spoken Language Court Interpreters, must be appointed. Rule 2.560(e)(1). Preference is given to the appointment of certified and language skilled interpreters, then to persons holding a provisionally approved designation. Rule 2.560(e)(1) and Rule 14.100(a)-(e). If, after diligent search, a certified or other duly qualified interpreter is not available, the court may appoint an interpreter who is otherwise registered with the Office of State Courts Administrator. The court must make a determination, on the record, that the proposed interpreter is competent to interpret in the proceedings. Rule 2.560(e)(2). If no certified, other duly qualified interpreter or otherwise registered interpreter is available, the court may appoint in exceptional circumstances an interpreter not qualifying under the provisions of (e)(1) or (e)(2) if the court finds that good cause exists, such as the prevention of burdensome delay, the request or consent of the non-English-speaking or limited-English-proficient person, or other unusual circumstance, and the proposed interpreter is competent to interpret in the proceedings. Rule 2.560(e)(3). Such an appointment is limited to a specific proceeding and cannot be extended to subsequent proceedings without additional findings of good cause and the requirements set forth in Rules 2.560(e)(2) (3)(5). Rule 2.560(e)(5). If the interpreter is not appointed under Rule 2.560(e)(1), the court must so advise the accused, on the record, and the child may object or waive the appointment. Rule 2.560(e)(4). Perform Assessment to Determine Needs.**

When the court has determined that there is a need for interpreting services, the next step is to determine the specific interpreting needs of the individual by performing an assessment. If the need for services has been identified in advance of the proceeding, the court can use the information submitted to perform the assessment.<sup>10</sup> If the person's needs are not identified until the person is in court, the court should ask questions that involve descriptions or narrations to determine the extent of the communication barrier and the services required.<sup>11</sup>

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<sup>9</sup> Rule 2.560(c).

<sup>10</sup> *Supra* note 1 at 11.

<sup>11</sup> *Id.*

When the court determines that a witness cannot understand the English language or cannot express himself or herself in English sufficiently to be understood, an interpreter who is duly qualified to interpret for the witness shall be sworn to do so. § 90.606(1)(a). This is not limited to individuals who speak a language other than English but applies also to the language and descriptions of any person who cannot be reasonably understood or cannot reasonably understand questioning without the aid of an interpreter. § 90.606(1)(b).

### **Selection of Interpreter**

Once the court has determined that a need for interpreting services exists and has assessed the extent of the communication barrier, the court must select an interpreter for the proceeding.<sup>12</sup> Whenever possible, a certified or other duly qualified interpreter must be appointed.<sup>13</sup>

For spoken language court interpreters, certified has been defined as, “a designation reserved for interpreters who have completed all requirements for certification in accordance with these rules and hold a valid certificate issued by the Office of the State Courts Administrator.”<sup>14</sup> Duly Qualified Interpreter has been defined as, “an interpreter who is certified or language skilled, or, if a certified or language skilled interpreter is unavailable, a provisionally approved interpreter. . .”<sup>15</sup>

There may be situations where a certified or other duly qualified interpreter cannot always be readily appointed; an interpreter who is neither certified nor other duly qualified may be appointed during a proceeding if the court finds that good cause exists for said appointment, such as burdensome delay, the request or consent of the non-English-speaking or limited-English-proficient person, or other unusual circumstance, and the proposed interpreter is competent to interpret.<sup>16</sup> In criminal and juvenile delinquency proceedings, a defendant is allowed to object to the proposed appointment of an interpreter who is neither certified, language skilled, nor provisionally approved.<sup>17</sup>

### **Provision of Services**

Before providing any interpreting or translation services, the interpreter must take an oath that he or she will make a “true interpretation” of the questions asked and the answers given and that the interpreter will make a “true

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<sup>12</sup> *Id.*

<sup>13</sup> Rule 2.560(e)(1) and Fla. Stat. 90.6063(2).

<sup>14</sup> Florida Rules for Certification and Regulation of Spoken Language Court Interpreters (hereinafter Fla. R. Cert. & Reg. Ct. Interp. 14.100 (a) .

<sup>15</sup> Fla. R. Cert. & Reg. Ct. Interp. 14.100(b) or *Id.*

<sup>16</sup> Rule 2.560(e)(2).

<sup>17</sup> *Supra* note 1 at 12.



translation” into English any writing that he or she is required to translate.<sup>18</sup> Interpreters are expected to render complete and accurate interpretations without altering, omitting, summarizing, explaining, or adding anything to what is stated or written and without explanation.<sup>19</sup> Further, interpreters are expected to be impartial and unbiased. If there is any real or perceived conflict of interest, the interpreter must disclose such to the court.<sup>20</sup>

Interpreters are subject to the same provisions as witnesses,<sup>21</sup> and must protect the confidentiality of all privileged and confidential information.<sup>22</sup>

### **Modes of Interpreting and Service Delivery Methods**

There are several modes of interpreting that may be available to the court. The first is consecutive interpretation, in which the interpreter renders statements from or to the person in need of services to or by the court intermittently, after a pause between statements by the speaker.<sup>23</sup> The interpreter may signal a speaker to pause for consecutive interpretation utterances that exceed the interpreter’s short-term capacity for recall.

Alternatively, the interpreter may engage in simultaneous interpretation, rendering an interpretation continuously to the person in need of services at the same time that the speaker is communicating.<sup>24</sup> Simultaneous interpretation is intended to be heard only by the person receiving the interpretation services and usually accomplished by speaking in whispered tones or using special equipment to ensure the information is received properly without disruptions to the proceeding.<sup>25</sup>

Another mode of interpreting is sight translation, wherein the interpreter provides an oral rendition of a source text from one language to another. Finally, the interpreter can engage in translation services, wherein he or she creates a written document in the target language that accurately reproduces the equivalent of the written source language document.<sup>26</sup>

The above services can be delivered in a variety of ways. Commonly, the interpreter is physically present at the proceeding. This may be desirable where the hearing will be lengthy or complex or where technical issues or limitations may exist.<sup>27</sup> An alternative to this is remote telephone interpretation, where the

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<sup>18</sup> Fla. Stat. 90.606(3).

<sup>19</sup> Fla. R. Cert. & Reg. Ct. Interp. 14.310.

<sup>20</sup> *Id.*

<sup>21</sup> Fla. Stat. 90.606(2).

<sup>22</sup> Fla. R. Cert. & Reg. Ct. Interp. 14.340 and Fla. Stat. 90.6063(7).

<sup>23</sup> *Supra* note 1 at 12.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Supra* note 1 at 13.

<sup>27</sup> *Id.*

interpreter uses a standard telephone line and a speakerphone to consecutively or simultaneously interpret the communications to or from the person in need of services and the court.<sup>28</sup> This may be used when an interpreter is unable to be present for the hearing due to distance or other factors but is still available to interpret.

A second alternative is remote audio/video interpretation, where interpreters use integrated audio-visual or internet-based systems to facilitate communication.<sup>29</sup> The advantages of this system are even greater than those with telephonic interpretation, as the video component allows an interpreter to actually view the activities in the courtroom as they are providing the interpreting service, and audio mixers allow for speaker isolation.

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

## **Interstate Compact for Juveniles**

### **History**

The Interstate Compact for Juveniles in its current form was enacted in 2011. The prior format contained detailed statutes and articles on Procedures for Interstate handling of Probationers and Parolees, Voluntary Return, Runaways and Escapees. No such details exist in the three current statutes governing Interstate Compact found in Part XIII of Chapter 985 at § § 985.801, 985.802, 985.8025.

### **Generally**

The Interstate Compact on Juveniles finds that juveniles subject to the Compact are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. The Compact is an agreement among and between the states to cooperate with each other to provide for the welfare and protection of juveniles and of the people of this state by:

- returning juveniles to states when their return is sought:
    - who are not under proper supervision and control, or
    - who have absconded, escaped or run away.
  - accepting the return of juveniles whenever found residing in this state or apprehended in another state.
  - taking all measures to initiate proceedings for the return of such juveniles.
- § 985.801.

The Compact itself can be found at § 985.802.

### **Specifically**

There are 13 different Articles that address the common details of the Compact from Powers and Duties, to Organization and Rulemaking, Finance, Termination, and other means of leaving the Compact, to the requirement of a State Council and its make-up (details of which are found in § 985.8025).

Of these, “Article I, Purpose”, contains provisions that impact the Courts and Department of Juvenile Justice, including:

- Ensuring:
  - Provision of adequate supervision and services as ordered by the adjudicating judge or parole authority;
  - Public safety interests of the public and victims in both the sending and receiving state;
  - Return of the juveniles to the requesting state;
  - Immediate notice to jurisdictions where the juvenile may be authorized to travel or relocate;
  - Effective tracking and supervision of juveniles.

- Establishing procedures:
  - To manage the movement between the states of juveniles released to the community under a specified jurisdiction, and juvenile departments or a criminal or juvenile justice agency;
  - To resolve pending charges or detainers prior to transfer or release;

## **Jurisdiction in Delinquency Proceedings**

### **Generally**

The circuit courts are granted exclusive original jurisdiction over juvenile delinquency proceedings. § 985.0301(1). Jurisdiction attaches to a case and the subject child in either of two situations. When the child has been taken into custody with or without service of the summons and before or after the filing of a delinquency petition (for purposes of speedy trial, whichever occurs first), personal jurisdiction attaches to the child. § 985.0301(2), (4)(b).

Or, when the child and his or her parent or guardian have been served summons, subject matter jurisdiction attaches. § 985.0301(2), (4)(b). Petitions alleging delinquency must be filed in the circuit where the alleged delinquent act or violation of law occurred but may be transferred by the circuit court to the circuit in which the child resides or will reside at the time of detention or placement for dispositional purposes. § 985.0301(4)(a).

### **Retention of Jurisdiction**

Once jurisdiction attaches, the circuit court shall retain jurisdiction over a child adjudicated delinquent, unless the court relinquishes jurisdiction sooner [ § 985.0301(5)(a)], until:

- the child reaches 19 years old if on probation;
- the child reaches 21, to allow the child to complete the commitment program, including conditional release supervision. § 985.0301(5)(b).

Jurisdiction is retained of juvenile sexual offenders until the child reaches 21, whether in a supervised community-based treatment alternative or placed in a program or facility for juvenile sexual offenders in order to allow completion of the program. § 985.0301(5)(c).

Once jurisdiction has attached, the court retains jurisdiction over a child and the child's parent or legal guardian of any restitution order until the order is satisfied. § 985.0301(5)(d). A prerequisite is that the restitution order must be issued separately from the disposition order or order of commitment.

### **Statutory Jurisdiction Provisions of Note**

A child subject to the Juvenile Court's jurisdiction past age 18 is not protected from another court exercising jurisdiction over the individual if a new law violation is committed after becoming an adult. § 985.0301(5)(e).

Despite the language of § 985.0301(5)(c) which on its face mandates the retention of jurisdiction in juvenile sexual offender cases, statute § 985.0301 concludes at (6) as follows:

“The court may at any time enter an order ending its jurisdiction over any child.”

## Juvenile Assessment Center

Juvenile Assessment Centers (JAC) are community-operated facilities that provide colocated central intake and screening services, as well as a broad array of youth-related services. § 985.135(1)-(2). The centers are managed and governed by the participating agencies through interagency agreements and an advisory committee that guides the center's operation. § 985.135(3). The participating agencies have operational oversight on only those individual service components for which the agency has statutory authority and responsibility. § 985.135(3).

Services are both mandated as well as authorized or encouraged.

- Those mandates include:
  - Cooperation with substance abuse programs, mental health providers, law enforcement agencies, schools, health service providers, state attorneys, public defenders, and other agencies serving youth. § 985.135(2)
  - Provision of colocated central intake and facilitate initial screening and case processing, including:
    - delinquency intake,
    - identification of the child,
    - a needs assessment,
    - screenings:
      - substance abuse,
      - mental health, and
      - physical, and
      - diagnostic testing where appropriate.
  - Provision by the department of sufficient staff and resources at the Center to provide detention screening and intake services. § 985.135(4)
  - The coordination and sharing of information among the participating agencies to facilitate the screening of and case processing for youth referred to the department. § 985.135(6)
- Those authorized or encouraged include:
  - A truancy program providing central intake and screening of truant children within a specific area based upon written agreements<sup>1</sup>. A center may work cooperatively with *any* truancy program operating in the area serving the center. § 985.135(5).
  - Conducting predisposition assessments and evaluations of youth. § 985.135(7).
    - Transportation of a youth from detention to a JAC or JAC staff may, while youth is in a juvenile detention center awaiting

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<sup>1</sup> between the center, local law enforcement agencies, and local school boards.

placement in a residential commitment facility, conduct assessments and evaluations, which may include:

- needs assessment;
  - substance abuse evaluations;
  - physical and mental health evaluations;
  - psychological evaluations;
  - behavioral assessments;
  - educational assessments;
  - aptitude testing; and
  - vocational testing.
- All information, conclusions, treatment recommendations, and reports derived from the performance of above shall be:
    - included in the youth's commitment packet and
    - shall accompany the youth to their residential commitment facility.

The youth's parents or guardians and other family members should be involved in the assessment and evaluation process. § 985.135(7).

## Juvenile Sex Offenders and The Adam Walsh Act

### Generally

In 2006 the Adam Walsh Child Protection and Safety Act (formerly 42 USC 16901) was enacted to protect the public and establish a comprehensive National Registry of Sex Offenders and Offenders against Children to assist law enforcement in tracking sexual offenders. [In 2018, it was made part of Title 34 USC 20901 (Crime Control and Law Enforcement) addressing “Protection of Children and Other Persons”.

To conform with the Adam Walsh federal law, Florida’s § 943.0435 requires certain juvenile sexual offenders to register with the Department of Law Enforcement in the same manner as the adult sexual offenders. Public access to registration information regarding sexual predators and sexual offenders is accessible, which is not exempt from public disclosure.

§ 943.043(2). The “Adam Walsh Act” required the inclusion of children 14 years or older at the time the crime was committed *if* the crime was comparable or more severe than aggravated child abuse as described in 18 USC 2241. As a result, § 943.0435(1)(h)(1)(d) provides that juvenile sex offenders are required to register if adjudicated delinquent for:

- Committing, or
- Attempting,
- Soliciting, or
- Conspiring to commit, any of the criminal offenses in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years or older at the time of the offense: Sexual Battery § 794.011 excluding § 794.011(10) [A person who falsely accuses a person listed in subparagraph (4)(e)7.<sup>1</sup> or another person in a position of control or authority as an agent or employee of government] Lewd and Lascivious Battery § 800.04(4)(b) where the victim is under 12 years of age or the court finds sexual activity by the use of force or coercion<sup>2</sup>; Lewd and Lascivious Molestation § 800.04(5)(c)(1) where the court finds molestation of a victim less than 12 years of age by an offender less than 18 years of age, and the molestation involved unclothed genitals; or
- Lewd and Lascivious Molestation § 800.04(5)(d) where the court finds molestation of a victim 12 years or older but less than 16 by an offender less

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<sup>1</sup> The offender is a law enforcement officer, correctional officer, or correctional probation officer as defined in § 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under § 943.1395 or is an elected official exempt from such certification by virtue of § 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

<sup>2</sup> § 800.04(4)(a)2. Lists additional actions by the offender but they are not included in § 943.0435.



than 18 years of age, where the court finds the use of force or coercion and unclothed genitals.<sup>3</sup>

### **Written Findings Required**

For all qualifying offenses, the court must make a written finding of the age of the offender and, except for sexual battery (§ 794.011), the age of the victim at the time of the offense. Making this finding in all cases involving a sexual offense is a for best practice handling this requirement. § 943.0435(1)(h)2.

For a violation of §800.04(4), the court must make an additional written finding indicating that the offense did or did not involve sexual activity and indicating whether the offense did or did not involve force or coercion. § 943.0435(1)(h)2.

For a violation of § 800.04(5), the court must make an additional written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion. § 943.0435(1)(h)2.

### **Registration**

The qualifying juvenile sexual offender may motion the court to remove the registration requirements only if:

- The conviction, regardless of adjudication was for:
  - § 800.04 (Lewd or Lascivious offenses),
  - § 827.071 (Sexual performance by a child),
  - § 847.0135(5) Computer pornography) or
  - of a similar offense in another jurisdiction, and
  - does not have *other* convictions for those above listed offenses in § 943.04354(1)(a).
    - or § 794.011 (Sexual Battery).
- Convicted of any above offense and required to register, solely on the basis of this conviction; or
- The person was convicted or adjudicated delinquent in *another* jurisdiction of an act similar to above and no longer meets registration criteria in that jurisdiction.  
§ 943.04354(1)(b)].
- The person is not more than 4 years older than the victim who was 13 years of age or older but younger than 18 years of age at the time the person committed the violation. § 943.04354(1)(c).

Motions for removal of registration requirements are in the criminal division of the circuit court in the circuit where:

- the qualifying offense occurred (if in this state);

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<sup>3</sup> Both FI statute § 800.04(5)(c)-(d) lists additional actions by the offender referenced in § 800.04(5)(a) but they are not included in § 943.0435.

- sexual offender or sexual predator resides in another jurisdiction for conviction of similar law of another jurisdiction, or
- where offender last resided, who no longer resides in this state, with a conviction of similar law of another jurisdiction.

§ 943.04354(2)(a).

The person must allege that “removal of the registration requirement will not conflict with federal law that requires that the sexual act be consensual, notwithstanding the age of the victim”. § 943.04354 (2)(b).

- If an offense, similar to § 943.04353(1)(a), from another jurisdiction:
  - written confirmation no registration requirement in that jurisdiction.

Notice requirements:

- To the state attorney and department
- At least 21 days before:
  - Sentencing
  - Disposition
  - Or hearing on the motion.

At the hearing, the state can present evidence in opposition or demonstrate a basis to deny. The court must rule. If the criteria in the statute are met, the court must instruct the person who petitioned to provide a certified copy of the order to the department. Obligations of the Department of Law Enforcement are set forth in the statute. Denial of the motion to remove registration requirements is a bar to future motions.

For those who must register as a sexual offender, they are required to present information [in person initially] to the Sheriff’s office in the county where they reside and provide the authorities with information regarding their abode, identifying characteristics, methods of communication (e.g. shall register all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding website homepage or application software name, and an ever-growing list of obligations), and they must be photographed and fingerprinted. § 943.0435(2). This information is entered into a national database and may be public.

Juvenile sexual offenders must re-register on a quarterly basis.

§ 943.0435(14)(b). There are a host of detailed obligations and time constraints, from vehicles to Driver’s License or ID to traveling for more than 5 days. Offenders and the Department of Juvenile Justice should be cautioned to stay current in those ever-changing obligations to avoid conviction for failure to timely or completely register.

### **Removal from the Registry**

An offender will stay on the registry for the duration of his or her life, unless that offender has received a full pardon or has had a conviction set aside in a post-conviction proceeding for any offense that meets the criteria for classifying

the person as a sexual offender for purposes of registration. § 943.0435(11). However, sexual offenders may be eligible for consideration to have their names removed from the registry and may have the registration requirement removed if they have been lawfully released from confinement, supervision, or sanction for at least 25 years, have not arrested for any misdemeanor or felony offense since that time and provided they were not required to register based upon adult convictions for any of the offenses in the extensive list set forth in § 943.0435(11)(a)1.

### **A Word of Caution**

In the past 24 years, more than two dozen amendments to the Sexual Offenders Registration statute have been made. Any changes in the federal law may impact what is required, mandated, or prohibited of any of those impacted by sex offender laws. The court, Department of Juvenile Justice, counsel for the state or defense should proceed with caution and assure that they are relying upon *current* statutes, as this publication may become inaccurate quickly due to the ever-shifting changes in State or Federal law.

## **Medicaid/Medicare Eligibility for Services upon Release<sup>4</sup>**

Federal regulations do not allow for Medicaid payments to be made for services to a youth residing in a detention or residential facility operated by or under contract with the Department of Juvenile Justice.

Requirements for applying or reapplying for Medicaid following a child's release from detention or commitment depend on whether the child or their family were receiving Medicaid benefits at the time they were placed into DJJ's custody.

If the child was receiving Medicaid benefits at the time they were detained, and if they have other family members receiving benefits, the child can regain their benefits if, upon their release from detention or commitment, a family member requests reinstatement of the child's benefits.

If the child was receiving Medicaid benefits at the time of detention, but no other family members were receiving benefits, the child can regain their benefits if, upon release from DJJ care, a family member completes an application for Medicaid benefits and submits it to the local DCF service center.

The DCF Medicaid approval process can take up to 45 days. Once a child is approved for Medicaid benefits, a form letter will be sent to the parent or custodian.

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<sup>4</sup> Information in this section from Department of Juvenile Justice, available online at <http://www.djj.state.fl.us/AboutDJJ/faq.html#HealthP3>.

## Restitution

The court that has jurisdiction over a child adjudicated delinquent may, by an order stating the facts upon which a determination of restitution was made, order the child to make restitution. § 985.437(1). A child has a constitutional right to be present at a restitution hearing unless they have knowingly and voluntarily waived that right. *J.C. v. State*, 1 So. 3d 1196 (Fla. 5th DCA 2008).

Such restitution would be part of the probation program or, for a committed child, part of the community-based sanctions ordered by the court.

§ 985.437(1). The restitution ordered may be monetary through a promissory note cosigned by the child's parents or guardians, or restitution may be in kind. § 985.437(2).

Whenever restitution is ordered, the amount may not exceed an amount the child and parent or guardian could reasonably be expected to pay, § 985.437(2), and must be based on a determination of the child's expected earnings upon finding suitable employment. *K.T.M. v. State*, 969 So. 2d 542(Fla. 2d DCA 2007).

The court may rely on direct testimony of fair market value to determine the amount of restitution. If direct evidence of fair market value is not available, the court can rely on the following to ascertain fair market value:

- Original market cost;
- Manner in which the item was used;
- General condition and quality of the item; and
- The percentage of depreciation. *K.W. v. State*, 983 So. 2d 713 (Fla. 2d DCA 2008).

The court may also base the amount of restitution on replacement costs, as an alternative to fair market value. *K.W. v. State*, 983 So. 2d 713 at 715. Another alternative available to the court is out-of-pocket cost; if this is used, the amount of restitution should be offset by the salvage value of any property returned. *C.M.S. v. State*, 997 So. 2d 520 (Fla. 2d DCA 2008).

A finding that the parent or guardian made a good faith effort to prevent the child from committing the juvenile act(s) may absolve the parent or guardian from liability for restitution. § 985.437(4).

Finally, the court may retain jurisdiction over the child and the child's parent or guardian whom the court has ordered to pay restitution beyond their 19<sup>th</sup> birthday until the restitution is paid in full or the court orders otherwise. § 985.437(5).

## **Service of Process**

Upon the filing of a petition alleging that the child committed a delinquent act or violation of the law, the clerk or deputy clerk must issue a summons.

§ 985.319(2). The summons must have a copy of the petition attached and must order the person served to appear for a hearing before the court at a specified time and place, no less than 24 hours after service, except in the case of a medical emergency. § 985.319(3). If the child has not been detained, the child's custodian must ensure the child is present at the hearing.

§ 985.319(3).

Law enforcement must serve process within 7 days after an arraignment or as soon as possible, except that no service is done on Sundays. § 985.319(4). The summons must be directed to and served upon, the child, the parents of the child, and any legal or actual guardians or custodians, and the child's Guardian ad Litem. § 985.319(5). If the court deems it advisable under the listed detention criteria, the child may be taken into custody when served.

§ 985.319(6). If the identity of the parents, custodians, or guardians are unknown after a diligent search, or if they live outside of the state or evade service, the person tasked to serve them must file a certificate of those facts; if this occurs, the court must appoint a Guardian ad Litem to the child if appropriate. § 985.319(7). If any of the parties refuses to comply with service, the court may order them taken into custody for a hearing to show cause why the noncompliant party or parties should not be held in contempt of court.

§ 985.319(7).

Upon application by the child or the state attorney, the clerk shall issue, or the court may issue, subpoenas for witnesses and/or records, documents, or other tangible objects at a hearing. § 985.319(8). Process and orders issued by the court are served and executed as any other process or order from the circuit court. § 985.319(9).

## Speedy Trial

### Generally

All children have a right to be brought to an adjudicatory hearing within 90 days of either the date the child was taken into custody or the date of service of summons issued when the delinquency petition was filed, whichever is earlier. Rule 8.090(a). If the child's case is not heard within the 90-day limit, and there are no circumstances that interrupt the running of the time period, the child is entitled to appropriate relief. Rule 8.090(b).

### Demand for Speedy Trial

However, a child may, by petition, demand a speedy trial. Rule 8.090(g). The child will have the right to an adjudicatory hearing within 60 days by filing a petition entitled "Demand for Speedy Trial" with the court and serving it on the prosecuting attorney. Rule 8.090(g). After filing such a petition, the court has 5 days to hold a hearing for report and announced receipt of the demand. 8.090(g)(1). At the report, the court will set the adjudicatory hearing no less than 5 days and no more than 45 days from the date of the report. Rule 8.090(g)(2). If the child is not brought to an adjudicatory hearing within 50 days from the date of filing the demand, the child will have the right to appropriate relief. Rule 8.090(g)(4).

A Demand for Speedy Trial is deemed a pleading that the child is available for the adjudicatory hearing, has diligently investigated the case, and is prepared or will be prepared for the adjudicatory hearing within 5 days. Rule 8.090(h). Such a demand may only be withdrawn by good cause shown, consent by the prosecuting attorney, or by order of the court. Rule 8.090(h).

### Motion for Discharge

After the above time limits have been exceeded without an adjudicatory hearing, the child may file a motion to discharge. Rule 8.090(m)(2). No later than 5 days after the filing of the motion, the court will hold a hearing on the matter and order the child to be brought to trial within 10 days, Rule 8.090(m)(3), unless:

- The child has voluntarily waived the right to a speedy trial.
- An extension of time has been ordered. An extension can result from any of the following:
  - Stipulation, announced to the court or signed by the child or the child's attorney and the prosecuting attorney;
  - Written or recorded order by the court citing the reasons and exceptional circumstances for the extension. Exceptional circumstances include:
    - Unexpected illness or incapacity or unforeseeable and unavoidable absence of a necessary person;

- A showing by the State that the unusual and complex nature of the case requires additional time;
- A showing by the state that specific evidence or testimony is presently unavailable despite efforts to secure it, but will become available at a later time;
- A showing by the child or state that delay is necessary based on developments that could not have been foreseen and which will materially affect the trial;
- A showing that delay is necessary to accommodate a co-respondent, where there is a reason not to sever the trial; or
- A showing by the state that the child has caused major delay or disruption of preparation or proceeding.
- Written or recorded order of the court for a period of reasonable and necessary delay that results from proceedings including, but not limited to, examination and hearing as to mental competence or physical ability to stand trial, for appeals by the state, and for adjudicatory hearings on other pending charges against the child. Rule 8.090(f).
- The failure to hold an adjudicatory hearing is attributable to the child, or their counsel, or to accommodate a co-defendant when the prosecuting attorney shows trying the cases together is necessary.
- The child is unavailable for the adjudicatory hearing, where unavailable means:
  - The child or the child's counsel fails to attend a proceeding where their presence is required; or
  - The child or child's counsel is not prepared for the adjudicatory hearing on the date it is scheduled. No presumption of nonavailability attaches unless the prosecuting attorney objects to the dismissal and presents evidence of nonavailability; the child must then establish availability by competent evidence.
- The Demand for Speedy Trial is invalid.
- If the court finds dismissal is not appropriate, the pending motion to discharge must be denied, and an adjudicatory hearing must commence within 90 days of a written or recorded order of denial. Rule 8.090(d)(1)-(6).

**Note:**

If none of the above applies and 10 days pass without the child being brought to an adjudicatory hearing, through no fault of the child's, the child will be forever discharged of the delinquent act or violation of the law. Rule 8.090(m)(3).



## **Transfer to Adult Court**

### **Waiver**

A voluntary waiver takes place when a child, alleged to have committed a violation of the law and prior to the start of an adjudicatory hearing, petitions the court with the parent or guardian's consent to be tried as an adult.

§ 985.556(1). The court must then hold a voluntary waiver hearing.

§ 985.556(1). After the hearing, the child is transferred to adult court jurisdiction and must be handled thereafter in every respect as an adult for that and every subsequent violation of the law, unless the adult court imposes juvenile sanctions. § 985.556(1).

An involuntary discretionary waiver takes place when, except as provided by involuntary mandatory waivers, the state attorney chooses to file a motion requesting that the court transfer to adult court if the child was 14 years old or older at the time the alleged delinquent act or violation of law occurred.

§ 985.556(2).

An involuntary mandatory waiver can occur in two ways.

- If the child was 14 years of age or older and has been previously adjudicated delinquent for an act classified as a felony, where he or she was adjudicated for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and if the child is currently alleged to have committed a second or subsequent violent crime against a person; or
- If the child was 14 years old or older at the time of the commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed or attempted or conspired to commit three offenses that are felony offenses involving the use or possession of a firearm or violence against a person.

The state attorney must request that the court transfer the child to adult court or provide reasons to the court for failing to make such a request, or the state attorney must direct file. Upon the state attorney's request, the court shall either enter an order transferring the case and certifying the case for trial as if the child were an adult or provide written reasons for not issuing such an order. § 985.556(3). The court shall conduct a hearing on all transfer request motions for the purpose of determining whether a child should be transferred. In making its determination, the court shall consider the factors outlined in § 985.556(4)(c). The Effect of an Order Waiving Jurisdiction is the child is transferred for prosecution as an adult with adult sanctions. § 985.556(4)(e).

### **Direct Filing**

**Discretionary Direct File** occurs if, with respect to a child that is 14 or 15 years old at the time of the commission of the alleged offense, the state attorney files any information with the adult court. § 985.557(1)(a). In the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated assault;
- Aggravated stalking;
- Murder;
- Manslaughter;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary or specified burglary of a dwelling or structure, or burglary with an assault or battery;
- Aggravated battery;
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Grand theft;
- Possessing or discharging any weapon or firearm on school property;
- Home invasion robbery;
- Carjacking; or
- Grand theft of a motor vehicle or grand theft of a motor vehicle valued at \$20,000 or more if the child has a previous adjudication for grand theft of a motor vehicle.

**Discretionary Direct File** also occurs if, with respect to a child who was 16 or 17 at the time of the alleged offense, the state attorney files information in adult court when, in his or her judgment and discretion, the public interest requires that adult sanctions be considered. § 985.557(1)(b). However, the state attorney may not direct file any information in adult court if the child is currently charged with a misdemeanor offense unless he or she had at least two previous adjudications or adjudications withheld, at least one of which was classified as a felony. § 985.557(1)(b).

### **Effect of Direct File**

- Once a child has been transferred for criminal prosecution pursuant to an information and has been found to have committed the presenting offense

or a lesser included offense, the child shall be handled thereafter in every respect as if an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions under § 985.565. § 985.557(2)(a).

- When a child is transferred for criminal prosecution as an adult, the court shall immediately transfer and certify to the adult circuit court, for the prosecution of the child as an adult, all felony cases pertaining to the child which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not been made. If a child is acquitted of all charged offenses or lesser included offenses contained in the original case transferred to adult court, the child shall be subject to the same penalties to which such cases would have been subject before being transferred to adult court. § 985.557(2)(b).
- When a child has been transferred for criminal prosecution as an adult and has been found to have committed a violation of state law, the disposition of the case may be made under § 985.565 and may include the enforcement of any restitution ordered in any juvenile proceeding. § 985.557(2)(c).

### **Indictments**

A child of any age charged with a violation of the law punishable by death or life imprisonment is subject to the jurisdiction of the juvenile court unless and until an indictment on the charge is returned by a grand jury. § 985.56(1).

When such an indictment is returned, the delinquency petition must be dismissed, and the child must be handled as an adult in every respect, on the offense punishable by death or life imprisonment, and on all other felonies or misdemeanors charged in the indictment and based on the same transaction as the offense punishable by death or life imprisonment or on one or more acts or transactions based on the offense punishable by death or life imprisonment. § 985.56(1). In addition, the juvenile court must immediately transfer and certify to adult court all felony cases pertaining to the child which have not yet resulted in a guilty plea or plea of nolo contendere or in which a finding of guilt has not been made. § 985.56(4)(b).

The grand jury has 21 days to act and return an indictment. The juvenile court may not hold an adjudicatory hearing during those 21 days unless the state attorney notifies the court that he or she does not intend to present the case to the grand jury or has presented it to the grand jury and the grand jury has not returned an indictment, in which case the court may hold an adjudicatory hearing sooner than 21 days. § 985.56(2). If the grand jury fails to act within the 21 day period, the court may hold an adjudicatory hearing after that period. § 985.56(2).

**If the juvenile court holds an adjudicatory hearing and the child is found to have committed the alleged offense punishable by death or life imprisonment, the court must sentence the child as an adult. § 985.56(3).  
If the court finds that the child did not commit the indictable offense but**

**committed a lesser included offense or any other offense he or she was or could have been indicted for as a part of the criminal episode, the court may impose alternative juvenile sanctions under § 985.565.**

## Unified Family Court – Model Family Court

If the judicial system encourages alternatives to the adversarial process, empowers litigants to reach their own solutions, and assists in crafting solutions that promote long-term stability in matters involving children and families, the likelihood of future court intervention in the family should be decreased – whether this be through minimizing post-judgment litigation or preventing the dependent child of today from becoming the delinquent child of tomorrow. Our ultimate goal remains to facilitate the resolution of disputes involving children and families in a fair, timely, effective, and cost-efficient manner.<sup>1</sup>

In traditional circuits, families come into contact with a variety of courts for a variety of reasons: divorce, domestic violence, abandonment, neglect or mistreatment of children, or the delinquent or criminal acts of children. These families may “spin from courtroom to courtroom caught in a process that depletes time, money, and energy, and yet never really addresses the core of the problem. Ironically, children, the intended beneficiaries of our family courts, suffer most as a result.”<sup>2</sup>

Unified Family Courts (UFCs) serve to coordinate judicial efforts in cases involving the same family, regardless of the manner in which dockets for different types of cases are structured and managed,<sup>3</sup> and provide one court that will hear the variety of cases facing a family in a consolidated, coordinated fashion. The Florida Supreme Court enumerated the guiding principles of a UFC, saying, “The legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.”<sup>4</sup>

The guiding principles are all aimed at increasing stability within the family, increasing court functionality and coordination, and conserving resources, both judicial and familial.

A UFC may hear cases involving divorce or dissolution of marriage, child support issues, civil domestic violence injunctions, juvenile dependency,

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<sup>1</sup> *In re Report of Family Court Steering Committee*, 794 So. 2d 518 (Fla. 2001) 535-536.

<sup>2</sup> Wright, C. *Representation of Children in a Unified Family Court System in Florida*, 14 U. Fla. J.L. & Pub. Pol’y 179 (2002-2003) at 180.

<sup>3</sup> *In re Report of the Commission on Family Courts*, 633 So. 2d 14 (Fla. 1994) at 17.

<sup>4</sup> *Supra* note 1 at 524 (quoting the Committee’s commentary).

juvenile delinquency, and truancy issues<sup>5</sup>, and the court must be highly coordinated, responsive to the needs of the families and children, and be flexible in its responses.

Coordination of cases within the UFC requires the court to identify all cases involving the family.<sup>6</sup> The court should be informed if there are any other cases pending that involve the family.

Responsiveness to the family requires “continued attention to the needs of the children and family as the case moves through the judicial system so that the appropriate court resources are made available and linkages to appropriate community resources are facilitated.”<sup>7</sup> The court should be aware of the family’s situation and determine which court actions and resources will best benefit the family.

The court should also be aware of any steps taken by the child to engage with the independent living programs offered by the Department of Children and Families. Independent living courts are designed to educate children in the care of the Department of Children and Families as to their rights and to teach them educational and life skills to be able to “make it on their own.”<sup>8</sup> These independent living courts bring together representatives from a variety of agencies, including but not limited to Guardian ad Litem, community-based care caseworkers, and DJJ staff, to ensure the child has an independent living case plan and sufficient resources to support the child as he or she ages out of the care of a state agency and transitions into independent adulthood.

A UFC may face agency coordination issues similar to those issues present in traditional circuits that handle crossover cases. A UFC should engage in the same practices discussed in the Crossover Cases general topic.

Additionally, as a UFC may hear cases that involve aspects of domestic violence, a UFC should conform the courtroom practices to those discussed in the Domestic Violence and Delinquency general topic.

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<sup>5</sup> *Id* at 525.

<sup>6</sup> *Id* at 529.

<sup>7</sup> *Id*.

<sup>8</sup> Pudlow, J. *Independent Living Docket: Helping Foster Kids Transition into Adulthood*. (December 1, 2008).

## **Walker Plan Approval by Judge**

After a delinquency petition is filed but prior to an adjudicatory hearing, a plan of the proposed treatment or conduct may be submitted for the child in lieu of a plea. Rule 8.075(b). The terms and conditions of the plan must be worked out with the assistance of DJJ and other supervising agencies. Rule 8.075(b). The plan may be for an indeterminate period of time, for a specified period, or until the petition is dismissed. Rule 8.075(b)(5). The court has no obligation to accept any plan offered. If the court rejects the proposed plan, the court must state on the record the reasons for rejecting the proposal. Rule 8.075(b)(3). However, if a plan is accepted, the plan must be in writing, agreed to, and signed by the state attorney, the child, the child's counsel (if the child has one) and, unless excused by the court, the child's parents or guardians. Rule 8.075(b)(1). Additionally, an agent from DJJ or another supervising agency must sign to indicate whether the agency recommends and consents to the plan. Rule 8.075(b)(1).

If the child violates the plan, the violation or violations must be presented to the court by a motion of the supervising agency or any other party, and a hearing shall be set. Rule 8.075(b)(4). If the court finds that a violation has occurred, the court may act to enforce the plan, modify the plan by supplemental agreements, or set the case for a hearing on the original petition. Rule 8.075(b)(4).

***Facilitating Pro Se Litigants with  
Remote Appearance Technology***

*May 6, 2020*

***Introduction***

This guide sets forth best practices and logistical considerations with respect to facilitating pro se litigants with remote appearance technology.

The court should be mindful of the following considerations:

1. Ensure the technology is sufficient to allow the court to preside over and resolve the matter effectively.
2. Leverage remote appearance solutions that present little or no cost to pro se litigants.
3. Recognize costs to the litigants of using phone minutes and/or data if free and stable Wi-Fi is not readily available to them.
4. Verify the required equipment needed for all participants, ease of use, and the ability to access the solution remotely.
5. Control access to the proceeding for participants and determine the necessary level of privacy required for the event.
6. Ideally, use the same mode of remote appearance technology for all parties participating in the court event.
7. Account for ADA requirements and web content accessibility standards.

*Match each proceeding with the remote appearance medium that (1) complies with due process standards and general law, and (2) reliably achieves the purpose of the proceeding. In many instances a phone conference will satisfy the purpose of a court event, in others, a video conference may be required or preferable.*

***Best Practices for Judges***

**Planning for the Proceeding**

1. Explore the full functionality of the remote appearance platform (i.e. waiting rooms) and attend regular training for the platform and other related technologies.
2. Allow for proper spacing and allotment of time for hearings, as pro se litigants may need extra time to present their case and work through any technology issues.
3. Ensure clear public information about the availability of non-confidential court proceedings via live streaming or other access.
4. When possible, obtain reliable email addresses for the parties, and verify their ability to access a stable internet connection if a video conference is to be used.
5. Determine whether any language interpretation will be needed by any participant, and the effect that need might have on effective participation via remote appearance technology. Schedule and group hearings to optimize the use of interpreter resources.



### *Noticing for the Proceeding*

6. Provide notice to the litigant of the intent to use Zoom or similar free remote appearance platform along with connection instructions.
7. Require that notices of hearing contain a phone number and a link to the Zoom hearing, or similar free remote appearance platform, for the specified date and time.

### *Starting the Procedure*

8. Start each hearing by laying the ground rules. Describe how the hearing will be conducted and how the platform will be used.
9. Announce the case number prior to commencement of the proceeding and require all parties to announce themselves to assist with the court record, tagging, and transcription.
10. Address parties on the record to verify that they are waiving their right to be present in the courtroom for the proceedings. In addition, if there is a victim involved, ensure that the victim's rights are addressed on the record.
11. Assure all sides they will be heard, but that the use of the technology requires a rigid rule of speaking one-at-a-time. The judge will invite comment from each person and allow opportunities to respond. The judge runs the hearing and by name invites testimony, argument, etc. from each person so the record is clear and the hearing is orderly.
12. Despite not being physically in the courtroom, the court should continue to remind participants the proceeding is live, is being recorded, and that courtroom decorum rules apply.
13. The court should advise participants if the proceeding is being recorded and note restrictions on the unauthorized recording of the proceeding.

### *During the Procedure*

14. Judges should encourage the use of gallery view in the remote video settings, allowing all parties and participants to see each other in the hearing.
15. Be prepared to postpone the hearing if the pro se litigant has issues using the technology.
16. Finalize orders and file and serve through the CAPS Viewer or E-Portal.

### Contact Information / Procedures

1. Provide extra notice of hearings. Consider mailing the virtual hearing information to the pro se litigant with clear instructions on how to contact the court to arrange remote participation.
2. Provide a telephone option, toll-free, if possible, as an alternative for video appearance if appropriate.

### Procedural Practices

3. Judges and/or court staff must act as hosts to control remote meetings. Appoint the case manager or other staff as co-host so that they can help manage the waiting room and rename participants as needed.

### Document Handling

4. Consider the need for an electronic signature workflow solution, with detailed instructions, when responding or filing.
5. Provide the capability for all parties to deliver all potential evidence to the court in advance.

### Technology Features of the Remote Appearance Platform

6. When hosting hearings, the court should enable the “Waiting Room” function in Zoom. The “Waiting Room” allows the host to control who is admitted to the hearing and prevent participation by individuals who are not litigants in that case.
7. Train self-help staff and/or all staff so that they can troubleshoot with the pro se litigants. Provide a Zoom Procedure Guide to all staff.

*Consider attaching the companion best practices guide, [Representing Yourself and Using Remote Appearance Technology with the Courts](#), to pro se litigant communications. The companion guide has been posted to many court and clerk websites and shared with justice stakeholders.*

***Representing Yourself and Using  
Remote Appearance Technology with  
the Courts***

*May 6, 2020*

Remember, even though your hearing is happening over the phone or through the internet, it is a court proceeding. You should act the way you would if you were in the courtroom in person. Court rules and standards apply.

*Please review the following tips:*

**Do**

- : ➤ Do let the court know if you don't have a phone or access to the internet. The court may be able to help you find a way to participate or may postpone the hearing.
- Do visit the video call website (such as [Zoom](#)) or a video sharing website ([YouTube](#)) for guides, helpful videos, and additional information.
- Do prepare for your virtual hearing. If you plan to participate in your hearing by video, download the video application before your scheduled hearing. Be sure to test your speaker, microphone, and camera before the hearing. Video call software websites often provide a test link to try your equipment before the actual event ([Zoom test example here](#)).
- Do dress appropriately, like you would if actually going to the courthouse.
- Do limit distractions during your hearing. Put all pets and other things that may be a distraction in a different room. Find a quiet place to participate in the hearing.
- Do keep your device on mute when not speaking. Keeping your phone, mobile device, or computer on mute unless speaking reduces feedback and limits background noise.
- Do call the court in advance if you want to present evidence. If you have documents or witnesses you want available for your hearing, check the judge's website or call the court for more information.
- Do make sure others using your Wi-Fi network minimize their usage during your hearing so you have the best possible connection.

***Don't:***

- Don't ignore the virtual hearing. If you cannot make the hearing or have a conflict, notify the court.

- Don't talk over others, it makes it hard for the judge and others to hear. Wait to speak until asked to by the judge.
- Don't do other things while on the call. Just like in an actual courtroom, you must pay attention to make sure you don't miss something important that is said or something the judge asks you to do.



## BEST PRACTICES

### ***Management of Evidence in Remote Hearings in Civil and Family Cases***

*May 5, 2020*

#### *Introduction*

This guide sets forth best practices with respect to the management of evidence during remote hearings in civil and family cases, provides an overview of the requirements for the conduct of in-person and remote hearings specified in [Florida Supreme Court Administrative Order 20-23, Amendment 1](#), and provides links to other resources generally addressing remote hearings.

#### *Best Practices for Remote Evidentiary Hearings*

Local administrative orders (AOs) should establish procedures for the filing and management of exhibits and the taking of witness testimony in remote hearings. Issues that a Florida judicial circuit may wish to address include specifying:

1. Procedures that distinguish between requirements for:
  - a. Parties represented by counsel and self-represented parties, if appropriate; and
  - b. Physical exhibits, exhibits capable of being provided electronically, and witness testimony.
2. Requirements for the parties to exchange exhibits and confer remotely before the hearing for the purpose of stipulating, as much as practicable, to the authenticity and admissibility of the exhibits. With respect to physical evidence, parties could be directed to exchange pictures of the evidence.
3. Requirements for the parties to file with the court any objections to exhibits by a specified deadline and procedures for the setting of hearings to resolve all such objections before the evidentiary hearing.
4. Requirements for the parties to:
  - a. Exchange witness lists that include the witnesses' names, email addresses, and cell and landline phone numbers before the hearing;

<sup>1</sup>In all cases, the presiding judge should ensure that any procedure independently established by the judge is

equitable and does not result in an advantage to one party over the other.

- b. Ensure their witnesses who will lay the predicate for evidence have a copy of the evidence;
  - c. Ensure their witnesses have the necessary technology to participate in the remote hearing and, if not, specify requirements for the provision of an affidavit from the party explaining and attesting to the inability for the witness to access such resources; Ensure their witnesses are aware of the witness testimony protocol discussed below.
  - d. Meet specified deadlines for the provision of the witness lists to the court along with the identification of any witness for whom an interpreter or an accommodation under the Americans with Disabilities Act will be required or for whom they request sequestration. The name of the interpreter should be included in the witness list.
- 5. Requirements for the marking and indexing of exhibits, filing methods, e.g., via the clerk or ePortal, email to the presiding judge, or upload to a cloud storage service, and filing deadlines.
  - a. With respect to physical evidence, the local AO could direct the parties to contact the presiding judge on a case-by-case basis and to indicate whether there is agreement among the parties as to how the physical evidence will be filed. Options for submission might include filing a picture of the physical evidence or submitting the evidence in a sealed, clear plastic bag.
  - b. Consider advising parties that documents or other items that the presiding judge must review during the hearing, but which are not being submitted as evidence, e.g., a driver's license to verify identity, do not have to be provided to the judge in advance and may be presented to the judge during the hearing using the camera.
- 6. Any applicable limits on the time that will be allotted for the hearing.
- 7. Provisions indicating that:
  - a. Discovery, evidence, and other rules of procedure still apply, unless suspended or amended by the Florida Supreme Court, as does the right to due process in all court proceedings; however, the courts and parties are encouraged to use flexibility during the public health emergency for the equitable resolution of cases.

- b. As such, nothing in the local AO limits the presiding judge's discretion to:
    - i. Establish other procedures consistent with the AO;<sup>1</sup>
    - ii. Admit or deny evidence in the case or determine other relief appropriate under the circumstances; and
    - iii. Reset the hearing if technological issues prevent the meaningful review of evidence, where the parties have complied in good faith with the procedures, to use more appropriate electronic means or, if authorized under Florida Supreme Court AOSC 20-23, Amendment 1, for an in- person hearing.<sup>2</sup>
- 8. Provisions notifying parties that they should contact the presiding judge's office to determine whether the judge has established additional procedures for a remote hearing.
- 9. Provisions notifying parties of the suspension of certain rules, court orders, and opinions by Florida Supreme Court AOSC 20-23, Amendment 1, relating to remote hearings and remote administration of oaths.
- 10. Procedures that ensure the public's right of access to court hearings while maintaining any confidentiality that may apply to information in exhibits or witness testimony.<sup>3</sup>
- 11. Responsibilities of the parties for providing for the transcription of the record and indicating that court reporters may remotely participate in the hearing.
- 12. Post-hearing procedures for the filing of exhibits not filed before the hearing, for a corrected index of exhibits introduced in evidence, and for the parties to retain copies of evidence admitted or denied admission by the presiding judge until the resolution of the case and exhaustion of any appeal.
- 13. Sanctions applicable to a party's failure to comply with the requirements of the local AO. Consider including these sanctions in the presiding judge's standing order or order setting the hearing.

For examples of recent AOs on this topic, see [Eleventh Judicial Circuit Administrative Memoranda](#).

With respect to witnesses, additional evidentiary issues for which the presiding judge of a remote hearing may wish to prepare include:

1. Advising witnesses at the beginning of the hearing or before their testimony of the following protocol for their testimony: they must be alone in a quiet room during their testimony, may not use a virtual background, background, and are ordered, subject to contempt of court, to turn off all electronic devices except for the device enabling participation in the hearing and to refrain from exchanging any electronic messages during their testimony.
2. Requiring witnesses to remain in a Zoom waiting room until they are called to testify and removing them from the hearing following their testimony. To enable this function, the presiding judge or clerk must host the Zoom hearing. This functionality is critical in the event that a witness must remain in a waiting room because he or she is sequestered. If sequestration is necessary, one of the following options will be needed:
  - a. The posting of a video of the proceeding after the hearing, rather than the live streaming the proceeding; or
  - b. Determination of some other mechanism that ensures the witness is unable to view the live-streamed proceeding.
3. Confirming that the witness is alone by requiring him or her to use his or her camera to scan the room before and after testimony and noting this for the record.

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<sup>2</sup> Under AOSC 20-23, Amendment 1, in-person hearings may be conducted only for essential proceedings. Additionally, under the AO, non-essential proceedings must be conducted remotely unless one of the two exceptions discussed in Footnote 4, below, apply.

<sup>3</sup> For a discussion of the strong presumption of openness for all court proceedings and of confidentiality requirements applicable in the judicial branch, see the [Government-In-The-Sunshine-Manual](#), 2020 Edition, by the Office of the Attorney General, at pages 12-13 and 63-68, respectively. Although the public has a right of access, it does not have the right to participate in the proceeding.



Florida Supreme Court Administrative Order 20-23, Amendment 1 requires the trial courts to conduct:

- Essential and critical proceedings in a manner that employs all methods feasible to minimize risk of COVID-19 exposure to all; and
- Non-essential and non-critical court proceedings using electronic means unless a judge determines that remote conduct of the proceeding is subject to an exception.<sup>4</sup>

Included within the categories of proceedings above are requirements for the conduct of certain proceedings in civil and family cases:

<b>Civil and Family Essential Proceedings - <i>must be conducted remotely or in-person</i></b>	<b>Civil and Family Non-Essential Proceedings – <i>must be conducted remotely</i></b>
Juvenile dependency shelter hearings	Alternative dispute resolution proceedings
Juvenile delinquency detention hearings	Status, case management, and pretrial conferences
Hearings on petitions for injunctions relating to safety of an individual	Non-evidentiary and evidentiary motion hearings
Hearings on petitions for risk protection Orders	Hearings in juvenile delinquency cases

<sup>4</sup> The exceptions are that the remote conduct of the proceeding would be: (a) inconsistent with the United States or Florida Constitution, a statute, or a rule of court that has not been suspended by administrative order; or (b) infeasible because the court, the clerk, or other participant in a proceeding lacks the technological resources necessary to conduct the proceeding or, for reasons directly related to the state of emergency or the public health emergency, lacks the staff resources necessary to conduct the proceeding.

Hearings on petitions for the appointment of an emergency temporary guardian	Hearings in noncriminal traffic infraction cases
Hearings to determine whether an individual should be involuntarily committed under the Baker Act or the Marchman Act	Problem-solving court staffings, hearings, and wellness checks
Hearings on petitions for extraordinary writs as necessary to protect constitutional rights	Non-jury trials, except for juvenile delinquency and termination of parental rights petitions in dependency cases unless the parties in those cases agree to remote conduct

To facilitate the remote conduct of proceedings, the AO:

- Authorizes chief judges to establish temporary procedures for the use, to the maximum extent feasible, of communication equipment for the conduct of remote proceedings.
- Authorizes the remote administration of oaths by audio-video communication technology for witnesses.
- Suspends all rules of procedure, court orders, and opinions applicable to:
  - Court proceedings that limit or prohibit the use of communication equipment for conducting proceedings by remote electronic means; and
  - Remote testimony, depositions, and other legal testimony that limit or prohibit the use of audio-video communications equipment to administer oaths remotely or to witness the attestation of family law forms.

#### *Other Resources Generally Addressing Remote Hearings*

1. Florida:
  - a. [Video of a Remote Mock Trial](#), Seventeenth Judicial Circuit, posted May 1, 2020.
  - b. [Benchguide Checklist for Procedural Safeguards During Hearings for Judges](#), Eleventh Judicial Circuit, May 4, 2020: checklist addressing items that a judge should consider before and during a remote hearing conducted via Zoom.
  - c. [Zoom Script for Judge](#), Eleventh Judicial Circuit, May 4, 2020: script for judges that establishes ground rules for a Zoom hearing.
2. National Center for State Courts
  - a. [Checklist for judges in virtual proceedings](#), April 22, 2020: short checklist indicating issues to be considered by judges when

conducting remote hearings.

3. [Michigan's Virtual Court Resources](#): contains a variety of remote hearing resources, including:
  - a. [Trial Courts Virtual Courtroom Standards and Guidelines](#), April 17, 2020: guidance for the Michigan judiciary on the best practices for conducting remote hearings.  
[Remote Proceedings Checklist](#), April 20, 2020: step-by-step guidance for the use of Zoom to set up and conduct a remote hearing.
  - b. [Frequently Asked Questions Regarding Expansion of Remote Proceedings](#), April 30, 2020: helpful, extensive list of questions regarding the expanded use of remote hearings.
4. [Texas Electronic Hearings with Zoom](#), Texas Judicial Branch: contains a variety of helpful resources for conducting remote hearings using Zoom.



## BEST PRACTICES

### ***Out-of-County Inmates***

*May 7, 2020*

#### ***Introduction***

This guide sets forth best practices with respect to providing due process to out-of-county arrestees during the COVID-19 pandemic.

#### ***Best Practices for Judges, State Attorneys, Public Defenders, and Law Enforcement Agencies***

##### ***Reliable contacts are essential***

1. Court administrative staff in each circuit must maintain an up-to-date list of statewide contacts for judges, state attorneys (SA), public defenders (PD), the Office of Criminal Conflict and Civil Regional Counsel, clerks of court (clerk), and the jail in each county to facilitate reliable communication among stakeholders.
2. Upon booking into a county jail on an out-of-county warrant or capias, it is strongly recommended that the hosting county jail or pretrial service staff send an email to the following eight contact persons: SA, PD, clerk, and the judge in both the home and holding counties. If possible, the email should include the documentation related to the arrest.
3. The first appearance judge should, after inquiry of the arrestee, make a provisional appointment of the PD in the hosting county.
4. The provisionally appointed PD should contact the home county PD and discuss options for release, plea in absentia, bond reductions, and/or pleas pursuant to section 910.035, Florida Statutes, etc., if applicable. These options include both non-transfer of venue options and transfer of venue pursuant to section 910.035, Florida Statutes.

##### ***Timeliness is key***

1. All contacts and communication among stakeholders, including victim contact by the SAO, should take place as expeditiously as possible.
2. Except when charges are also pending in the host county, if an inmate remains incarcerated in a host county ten (10) days following a first appearance hearing, the judge and state attorney in the host county must re-contact their counterparts in the issuing county to verify if the state continues to desire extradition and whether the current monetary bond or other conditions of pretrial release should be modified.

*The attached forms will expedite the process*

1. Jails should facilitate inmates executing pleas in absentia to be entered in the home county for misdemeanor offenses.
2. The jail point of contact should be available to receive pleas in absentia from attorneys by email using the attached forms.
3. To facilitate the execution of pleas, jails should facilitate remote, private conferencing between the attorney and inmate, as well as fingerprinting and the validation of inmate identity and signature.
4. The jail should return the plea form to the hosting PD for routing to the home county.
5. Jails should assist inmates to appear virtually for the entry of pleas whenever possible.

## Request to Transfer a New Case

*Explanation and Instructions – Please Read Carefully!*

A “Request to Transfer a New Case” is a form that allows you to request a transfer of a new criminal case(s) pending outside of the arresting county (i.e., pending criminal charges **not** in the county of arrest) to be resolved locally. In other words, if you are housed in a jail outside of the county where you have pending criminal charges, and you wish to resolve new pending charge(s) in the county of arrest, you may request to transfer the case to the county where you are incarcerated. **You may not use this form for violations of probation or violations of community control.**

This form should only be used if you have criminal charges pending outside of the arresting county.

### Instructions

- (1) Please fill out the attached form (“Request to Transfer a New Case”) in blue or black ink and print legibly. The attached form may also be filled-in electronically.
  - a. Write the correct case number, county, and circuit for your pending charges. The more accurate information you provide, the quicker this request can be processed.
- (2) The attached form refers to “Home Court” and “Holding Court.”
  - a. “Home Court” is the court where your case originated (i.e., where the arrest warrant was issued).
  - b. “Holding Court” is the court located in the county where you are currently in jail.
- (3) Once this form is completed, provide it to jail staff who will forward it to the “Holding Court” judge who handled or will handle your first appearance.
- (4) Your completed form will be filed with the “Home Court.” It includes a “Response to Request to Transfer a New Case,” which will be completed by the “Home Court” State Attorney’s Office. *Do not fill out the “Response to Request to Transfer a New Case.”*
- (5) If the State Attorney’s Office agrees to the transfer, the “Home Court” Clerk of the Court will transmit the necessary documents to transfer your case to the “Holding Court” Clerk of the Court, and you will be called before this Court to address the pending charges.

Please understand that this request will only be granted upon the written approval of the prosecuting attorney from the county where the charge(s) was filed.

**IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT**  
(*"Home Court"*)  
*IN AND FOR* \_\_\_\_\_ *COUNTY, FLORIDA*  
(*"Home Court"*)

*STATE OF FLORIDA,*

**v.**

**CASE NO.:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
**, Defendant.**  
\_\_\_\_\_ /

**REQUEST TO TRANSFER A NEW CASE**

Defendant has been charged by information or indictment for criminal offense(s) arising in \_\_\_\_\_ (*"Home Court"*) County, Florida. However, Defendant is currently incarcerated in \_\_\_\_\_ (*"Holding Court"*) County, Florida, and due to the current state of emergency, law enforcement cannot transport Defendant to \_\_\_\_\_ (*"Home Court"*) County, Florida, for prosecution.

Accordingly, pursuant to section 910.035(1), Florida Statutes, Defendant seeks transfer of pending new \_\_\_\_\_ (*"Home Court"*) County criminal case (case number \_\_\_\_\_), to the \_\_\_\_\_ Judicial Circuit so that he or she may enter a plea of guilty or nolo contendere.

\_\_\_\_\_ (*initial here*) Defendant understands that by requesting this transfer, Defendant waives his or her right to trial in the county in which the indictment or information is pending and consents to the disposition of the case in the \_\_\_\_\_ Judicial Circuit in and for \_\_\_\_\_ (*"Holding Court"*) County, Florida.

\_\_\_\_\_ (*initial here*) Defendant further acknowledges that transfer of the instant case is subject to the approval of the prosecuting attorney of the court in which the information or indictment is pending. If the instant case is transferred to the \_\_\_\_\_ Judicial Circuit for resolution and Defendant chooses to enter a plea of not guilty, Defendant understands that the instant case will be returned to the court in which the prosecution was commenced, and the proceeding shall be restored to the docket of that court. See § 910.035(3), Fla. Stat.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\*\*\*This form, once completed, should be sent to the first-appearance judge and electronically filed by the judge's judicial assistant in the "Home Court" case and a copy to the home county State Attorney's Office.



*CERTIFICATE OF SERVICE*

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the foregoing Request was furnished to the below parties by U.S. Mail, hand delivery, or electronic means to:

*Original:*

Clerk of the Circuit Court in and for \_\_\_\_\_ County, Florida ("Home Court")

*Copies:*

Office of the State Attorney, \_\_\_\_\_ Circuit, in and for \_\_\_\_\_ County,  
Florida Defendant

By: \_\_\_\_\_  
Person Sending Copies

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

**STATE OF FLORIDA,**

**v.**

**CASE NO.:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
**, Defendant.**  
\_\_\_\_\_ /

**RESPONSE TO REQUEST TO TRANSFER A NEW CASE**

**COMES NOW,** \_\_\_\_\_, on  
behalf of the \_\_\_\_\_ Circuit State Attorney's Office. I am the  
prosecutor assigned to the above-styled case. I have received the Defendant's "Request  
to Transfer a New Case," and I agree / do not agree to the transfer of the instant case  
for resolution in the  
\_\_\_\_\_ Judicial Circuit in and for \_\_\_\_\_ County.

Respectfully

submitted, Name \_\_\_\_\_

Signature \_\_\_\_\_

Email \_\_\_\_\_

Phone \_\_\_\_\_

*\*\*\*If the Office of the State Attorney agrees with the request, the Clerk of the Court is respectfully requested to transmit the papers in the proceeding (or certified copies) to the appropriate Judicial Circuit Clerk of the Court, as required by section 910.035(a), Florida Statutes, so that prosecution may commence. If the Office of the State Attorney disagrees with the transfer, no further action by the Clerk is necessary, and the case will be tried in the "Home Court."*

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
the foregoing Response was furnished to the below parties by U.S. Mail, hand  
delivery, or electronic means to:

Original:

Clerk of the Circuit Court in and for \_\_\_\_\_ County, Florida ("Home Court")

Copies:

Office of the State Attorney, \_\_\_\_\_ Circuit, in and for \_\_\_\_\_ County,  
Florida Clerk of the Circuit Court in and for \_\_\_\_\_ County, Florida ("Holding  
Court") Defendant

By: \_\_\_\_\_  
Person Sending Copies

## **Request to Resolve Violation of Probation While Incarcerated in Holding Court**

*Explanation and Instructions – Please Read Carefully!*

A “Request to Resolve Violation of Probation While Incarcerated in Holding Court” is a form that allows you to request that your pending violation of probation (VOP) or community control (VOCC) be resolved while you are housed in another circuit. Therefore, you should only use this form if (1) you are currently facing an allegation of violating probation or community control and (2) are not currently being held in the same circuit as your violation of probation or community control charge.

*You may not use this form to address new charges; rather, you should use the packet titled “Request to Transfer New Case.”*

### **Instructions**

- (1) Please fill out the attached form in blue or black ink and print legibly. Write the correct case number, county, and circuit for your pending VOP/VOCC. The attached form may also be filled-in electronically.
- (2) The attached form refers to “Home Court” and “Holding Court.” “Home Court” is the court where your pending violation of probation or community control is. “Holding Court” is the county where you are currently in jail.
- (3) Once this form is completed, provide it to jail staff who will forward it to the circuit judge authorized to hear and resolve cases statewide.
- (4) This form will first be reviewed by the Holding Court. The Holding Court will contact the Home Court and determine whether (1) the pending VOP/VOCC can be handled by the Holding Court, (2) the Home Court can resolve the pending VOP/VOCC charges remotely, or (3) the pending VOP/VOCC cannot be resolved until you are transported to the Home Court.
  - a. The Holding Court Judge who would preside over your VOP/VOCC has temporary jurisdiction to handle “necessary matters relating to cases of criminal defendants being held indefinitely outside of the jurisdiction in which the defendant’s case is pending.” Florida Supreme Court Admin. Order 2020-92. However, before the Holding Court can resolve your VOP/VOCC, you will need to acknowledge that you have the right to have your VOP/VOCC resolved in the Home Court and that you waive venue.

**Completion and submission of this form does not guarantee that your pending violation of probation or community control will be resolved prior to Defendant’s transfer to the “Home Court.” However, efforts by the Holding Court will be made to coordinate with the Home Court to either resolve your VOP/VOCC remotely or have it handled with the Holding Court.**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
("Home Court")  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA  
("Home Court")

STATE OF FLORIDA,

v.

CASE NO.: \_\_\_\_\_  
("Home Court")

\_\_\_\_\_,  
Defendant.  
\_\_\_\_\_ /

**REQUEST TO RESOLVE VIOLATION OF**  
**PROBATION WHILE INCARCERATED IN**  
**HOLDING COURT**

Defendant is currently facing an allegation for violating probation or community control in \_\_\_\_\_ ("Home Court") County, Florida. However, Defendant is currently incarcerated in \_\_\_\_\_ ("Holding Court") County, Florida, and due to the current state of emergency, law enforcement cannot transport Defendant to \_\_\_\_\_ ("Home Court") County, Florida, for resolution of VOP/VOCC. Therefore, the Defendant

\_\_\_\_\_ (initial here) Requests that his VOP/VOCC be resolved while he is housed in \_\_\_\_\_ ("Holding Court") County, Florida.

\_\_\_\_\_ (initial here) Understands that if he or she ultimately resolves his or her VOP/VOCC with the "Holding Court," then he or she waives venue and the right to have his or her VOP/VOCC resolved in the "Home Court."

\_\_\_\_\_ (initial here) Understands that this form does not guarantee that his or her pending violation of probation or community control will be resolved prior to Defendant's transfer to the "Home Court."

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\*\*\*This form, once completed, should be sent to the local county judge for copies to be sent and to be electronically filed by the judge's judicial assistant in the "Home Court" case.

**CERTIFICATE OF SERVICE**

*(To be completed by the local judge's judicial assistant)*

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, the foregoing Request  
was furnished to the below parties by U.S. Mail, hand delivery, or  
electronic means to:

Original:

Clerk of the Circuit Court in and for \_\_\_\_\_ County, Florida  
(*"Home Court"*)

Copies:

Appropriate

judge in Home

Court -

Administration

in Home Court

Defendant

Office of the State Attorney, \_\_ Circuit, in and for \_\_\_\_\_ County, Florida  
(*"Home Court"*)

By: \_\_\_\_\_

\_\_\_\_\_  
Judicial  
Assistant

## Caselaw Updates

### **Florida Supreme Court**

*State v. J.A.R.*, \_\_\_ So. 3d \_\_\_, 2021 WL 2461211 (Fla. 2021) [QUASHED AND REMANDED TO REINSTATE PUBLIC DEFENDER'S FEE](#)

The Court reviewed conflicting decisions on whether juveniles at adjudicatory hearings must be advised of a right to contest [§ 938.29\(1\)\(a\)](#), F.S.'s minimum \$100 public defender fee. The Court held that when an individual charged with a felony is convicted, in imposing the statutory minimum, a trial court is not required to announce imposition of a public defender's fee or inform a defendant of the right to contest it. If, however, a trial court determines public defender services warrant a higher fee, it must notify the defendant of the fee and the right to contest it, as [Rule 3.720\(d\)](#) cannot alter substantive statutory principles. The Court has referred this matter of potential inconsistency or conflict to the Criminal Procedure Rules Committee.

<https://www.floridasupremecourt.org/content/download/746158/opinion/sc20-1604.pdf>

### **1<sup>st</sup> District Court of Appeal**

*B.E. v. State*, \_\_\_ So.3d \_\_\_ (Fla. 1st DCA 2018)

[ONCE COMPETENCY IS REASONABLY IN QUESTION, A HEARING AND ORDER REGARDING COMPETENCY ARE REQUIRED](#)

The youth's counsel filed a notice of incompetency and moved for an updated expert evaluation. The trial court granted the motion, and appointed an expert who has previously found the juvenile to be competent to conduct an updated evaluation. Following this appointment, no further proceedings regarding the youth's competency were conducted, and no further orders were entered addressing the issue. The appellate court said that because the trial court granted counsel's motion and appointed an expert to conduct an updated evaluation, it had reasonable grounds to question the juvenile's competency, at which point it was required to conduct a hearing on the issue and enter an order independently finding her competent to proceed before conducting an adjudicatory hearing.

[https://edca.1dca.org/DCADocs/2018/0043/180043\\_1287\\_09252018\\_08464204\\_i.pdf](https://edca.1dca.org/DCADocs/2018/0043/180043_1287_09252018_08464204_i.pdf)

### **2<sup>nd</sup> District Court of Appeal**

*J.S. v. State*, 277 So. 3d 270 (Fla. 2d DCA 2019)

[WITHHOLDING ADJUDICATION OF DELINQUENCY FOR GRAND THEFT OF A FIREARM AGAINST JUVENILE REVERSED](#)

A juvenile appealed from an order withholding adjudication on a count of grand theft of a firearm, which imposed a term of probation not to exceed his

nineteenth birthday. Upon appeal, defense counsel argued the State failed to disclose a pre-trial change in the testimony of a material witness, and the court failed to conduct a requested “Richardson” hearing to determine if the State committed a discovery violation. The appellate court reversed the disposition and remanded for a new trial, directing the trial court to conduct a full “Richardson” hearing.

[https://www.2dca.org/content/download/534102/5932480/file/181221\\_39\\_07312019\\_09093401\\_i.pdf](https://www.2dca.org/content/download/534102/5932480/file/181221_39_07312019_09093401_i.pdf)

*C.M. v. State*, 234 So. 3d 837 (Fla. 2d DCA 2018)

#### SELF DEFENSE IS A DEFENSE TO AFFRAY

The youth was charged with disorderly conduct and affray as the result of a physical altercation between the youth and another juvenile on their high school campus. The State’s only witness did not see who started the fight. C.M. and a corroborating witness testified that C.M. acted in self-defense. The State did not rebut C.M.’s claim of self-defense and C.M. moved (multiple times) for a judgment of dismissal. At the conclusion of the adjudicatory hearing the trial court found C.M. not guilty of disorderly conduct and guilty of affray. C.M. subsequently filed a written renewed motion for judgment of dismissal, arguing that she had moved for judgment of dismissal as to both charges on the basis that the State had failed to rebut her defense of self-defense, and that justified use of force is applicable in cases of affray just as it is in cases of disorderly conduct. The renewed motion was denied in an order containing no findings or conclusions. The appellate court noted that while there is an absence of Florida case law on the issue, other states have expressly held that self-defense is a defense to the charge of affray, and in this case the trial court erred in denying the motion for judgment of dismissal.

[https://edca.2dca.org/DCADocs/2016/5068/165068\\_39\\_01052018\\_08414417\\_i.pdf](https://edca.2dca.org/DCADocs/2016/5068/165068_39_01052018_08414417_i.pdf)

*R.M. v. State*, 259 So. 3d 953, 2018 (Fla. 2d DCA 2018)

#### DELINQUENCY REVERSED DUE TO RIGHT TO COUNSEL

The juvenile appealed the adjudication of delinquency and an order of commitment to the Department of Juvenile Justice for violations of the terms of his probation. The appellate court reversed because the record did not establish a proper waiver of the juvenile's right to counsel. During the plea hearing, the child appeared with no parent, guardian, or an adult relative, and stated he wanted to waive his right to counsel and admit to the violations. The court conducted a plea colloquy, confirmed and accepted the juvenile’s waiver, then set the case for disposition. However, the child was not offered a chance to confer with counsel regarding his right to counsel, had no relative or guardian present, and the trial court also failed to inquire about the child’s comprehension of the trial court's offer of counsel, his capacity in making the choice of whether to waive counsel, or the existence of any unusual circumstances which would preclude the juvenile from exercising the right of self-representation. Since the child’s waiver might not have been knowing and



voluntary, the court held that it was fundamental error. November 28, 2018.  
[https://edca.2dca.org/DCADocs/2017/4409/174409\\_39\\_11282018\\_08293952\\_i.pdf](https://edca.2dca.org/DCADocs/2017/4409/174409_39_11282018_08293952_i.pdf)

*T.A.K. v. State*, 258 So. 3d 559 (Fla. 2d DCA 2018)  
**DELINQUENCY REVERSED DUE TO KNOW KNOWLEDGE OF STOLEN VEHICLE**

The juvenile appealed a disposition order withholding adjudication of delinquency for the offense of trespass in an unoccupied conveyance and placing him on juvenile probation. While the state did provide evidence that the victim's car was stolen, it failed to prove that the child knew or should have known that the car the police found him in was stolen. The appellate court reversed, noting that "evidence that a person who was in a stolen vehicle fled from law enforcement is, by itself, insufficient to prove the knowledge element."  
[https://edca.2dca.org/DCADocs/2017/3378/173378\\_39\\_11092018\\_08123281\\_i.pdf](https://edca.2dca.org/DCADocs/2017/3378/173378_39_11092018_08123281_i.pdf)

### **3rd District Court of Appeal**

*V.L.H. v. State*, \_\_\_ So. 3d \_\_\_, (Fla. 3d DCA 2021)  
**DISPOSITION ORDER REVERSED; NEW PREDISPOSITION REPORT REQUIRED**

The juvenile appealed the court's violation of probation order and the disposition order committing her to a non-secure residential program. The appellate court affirmed the violation of probation order, but reversed the disposition order and remanded the case for a new disposition hearing. Although a post-disposition report was prepared, the report did not specifically address whether the juvenile's probation should be continued or whether she should be committed to the DJJ, and if committed, a recommended restrictiveness level. The court also reviewed a predisposition report that had been completed earlier, but that report recommended probation and did not identify an alternative recommendation as to the restrictiveness level if the trial court should decide to commit the juvenile to the DJJ. The appellate court held that the trial court erred by entering the disposition order prior to obtaining a new predisposition report from DJJ that reflected the juvenile's anticipated commitment after she violated her probation.  
[https://www.3dca.flcourts.org/pre\\_opinion\\_content\\_download/719378](https://www.3dca.flcourts.org/pre_opinion_content_download/719378)

*M.W. v. State*, 263 So. 3d 214 (Fla. 3d DCA 2018)  
**TRIAL JUDGE DID NOT SACRIFICE TRIAL COURT NEUTRALITY**

After finding the juvenile guilty of petit theft, the trial court withheld adjudication and issued a judicial warning. At trial, the defense counsel objected on the basis of hearsay when the store security officer testified that the value of the stolen item was \$299.95. The trial judge responded, "Establish how he knows." The State replied, "Your Honor, he has personal knowledge." The trial judge then replied, "Establish." Thereafter, the State asked questions

to establish the value of the stolen item at \$299.95. On appeal, the juvenile argued that the trial judge entered the fray to an impermissible degree in order to establish a key fact of the proceeding. Conceding that the defense at trial lodged no objection to the trial court's participation in this exchange, the juvenile argued fundamental error. The appellate court found that the trial judge did not sacrifice neutrality or impartiality during the trial. The trial judge merely told counsel for the state to lay a proper predicate for the evidence the State knew it was required to present. The trial judge neither asked a question of the witness nor told the State which question to ask of the witness. The trial judge did not cross a line and assume the role of the prosecutor. Accordingly, the appellate court affirmed.

<http://www.3dca.flcourts.org/Opinions/3D18-0400.pdf>

*J.A. v. Housel*, 272 So. 3d 522 (Fla. 3d DCA 2019)

#### A TRIAL JUDGE CAN NOT RE-IMPOSE TEN CONSECUTIVE SENTENCES FOR 100 DAYS DETENTION ON JUVENILE

A juvenile was originally adjudicated delinquent of petit theft and possession of cannabis. Following a probation violation, the lower court entered an order entitled "Do Not Run Order." The order required the juvenile to remain living at her mother's home "unless otherwise ordered" by the court, subject to enforcement by contempt. The juvenile subsequently ran away from home for ten days in violation of the "do not run" order, and the court sentenced the juvenile to ten consecutive sentences totaling 100 days of secure detention for indirect contempt. The juvenile was then placed in a secure drug treatment facility, and the court mitigated the 100-day secure detention sentence to the days already served (24 days) while awaiting placement in the drug treatment facility. Within 3 months, the court was notified the juvenile was discharged from the drug treatment facility, and the court ordered the juvenile to then serve the remainder of its original 100-day secure detention sentence. The juvenile sought relief by filing a Writ of Habeas Corpus alleging unlawful detention. The Appellate court granted the Writ of Habeas Corpus, affirming that the juvenile completed the sentence once it was mitigated to time served upon placement in a residential drug treatment facility, when there were no other conditions for completing that program imposed, and no other reservation of jurisdiction to modify the original sentence was made by the sentencing court.

<http://www.3dca.flcourts.org/Opinions/3D19-0692.pdf>

*S.B. v. State*, 255 So. 3d 497 (Fla. 3d DCA 2018)

#### SHIFTING THE BURDEN TO THE DEFENSE RESULTS IN REVERSAL

The youth appealed the trial court's finding of delinquency for committing a strong arm robbery. The only issue he raised is that the state improperly shifted the burden of proof during its cross examination when it asked the juvenile if he had any other witnesses who could corroborate that he was somewhere else at the time of the robbery. The appellate court found that the

state's cross examination improperly shifted the burden, that such an error was not harmless, and reversed and remanded for a new adjudicatory hearing.  
<http://www.3dca.flcourts.org/Opinions/3D17-1206.pdf>

#### **4<sup>th</sup> District Court of Appeal**

*N.J.P. v. State*, No. \_\_\_\_ So. 3d \_\_\_\_, 2021 WL 1898116 (Fla. 4<sup>th</sup> DCA 2021)

#### **ADJUDICATION AND DISPOSITION AFFIRMED IN PART; REVERSED IN PART**

The trial court adjudicated the youth delinquent for carrying a concealed weapon, battery, and violating probation. The trial court entered three separate disposition orders for each of his cases, but only two are at issue: the disposition order for his probation violation and battery. These two disposition orders failed to note the time the youth spent in secure detention before disposition, and did not list the statutory maximum for each offense. Additionally, the probation violation order did not specify the conditions of probation that the juvenile violated. The trial court also imposed costs that were higher than the statutorily mandated prosecution costs and public defender fees without a hearing. The appellate court affirmed the trial court's adjudication and disposition, but remanded two disposition orders for correction and the imposition of costs per Florida Rule of Juvenile Procedure 8.115(d)(2).

[https://www.4dca.org/content/download/741508/opinion/201645\\_DC08\\_05122021\\_095621\\_i.pdf](https://www.4dca.org/content/download/741508/opinion/201645_DC08_05122021_095621_i.pdf)

*A.B. v. State*, \_\_\_\_ So. 3d \_\_\_\_, 2021 WL 509694 (Fla. 4<sup>th</sup> DCA 2021)

#### **COMMITMENT REVERSED**

The juvenile appealed the trial court's delinquency adjudication and commitment to a nonsecure residential program. Since the trial court did not make the written findings as required under s. 985.441(2)(d), F.S. regarding the placement, the appellate court affirmed the adjudication, but reversed the juvenile's commitment and remanded the case for statutory compliance.

[https://www.4dca.org/pre\\_opinion\\_content\\_download/718047](https://www.4dca.org/pre_opinion_content_download/718047)

*F.L.P. v. State*, 292 So. 3d 791, (Fla. 4<sup>th</sup> DCA 2020)

#### **IF A PREDISPOSITION REPORT ONLY RECOMMENDS PROBATION AND NO ALTERNATIVE COMMITMENT RECOMMENDATION AND THE COURT SEEKS TO DEPART FROM THE ASSESSMENT OF THE PREDISPOSITION REPORT, IT MUST REQUEST AN ADDITIONAL PDR TO DETERMINE THE APPROPRIATE RESTRICTIVENESS LEVEL**

The trial court failed to articulate on the record at a probation-violation hearing an understanding of respective characteristics of restrictiveness levels under consideration regarding commitment of the juvenile, and thus the court failed to take necessary steps to lawfully depart from DJJ's recommendation. The court did not explain why non-secure level of commitment was better suited to serving juvenile's rehabilitative needs than continued probation, which was

DJJ's recommendation, and the court failed to explain how non-secure commitment would maintain the ability of the state to protect the public from further acts of delinquency. § 985.433(7)(b), F.S.

[https://www.4dca.org/content/download/632455/7186445/file/190362\\_DC13\\_03252020\\_095920\\_i.pdf](https://www.4dca.org/content/download/632455/7186445/file/190362_DC13_03252020_095920_i.pdf)

*B.W. v. State*, 307 So. 3d 31 (Fla. 4th DCA 2020)

TRIAL COURT MUST MAKE FINDINGS THAT DEFENDANT COULD REASONABLY BE EXPECTED TO PAY RESTITUTION AMOUNT BEFORE ORDERING AN AMOUNT TO BE PAID

Appellate court agreed with appellant that the trial court erred in ordering restitution without making required factual findings. The trial court ordered appellant to pay restitution without hearing any evidence on appellant's employment prospects. The appellate court reversed and remanded with instructions that the trial court make findings about appellant's ability to pay.

[https://www.4dca.org/content/download/687937/opinion/191524\\_DC13\\_11122020\\_094735\\_i.pdf](https://www.4dca.org/content/download/687937/opinion/191524_DC13_11122020_094735_i.pdf)

*R.B. v. State*, 294 So. 3d 410 (Fla. 4th DCA 2020)

TRIAL COURT DID NOT SET FORTH A COMPREHENSIVE BASIS FOR ITS DEPARTURE FROM THE DJJ'S RECOMMENDATION. AFFIRMED IN PART; REVERSED IN PART; AND REMANDED

Minor appealed his commitment to a high-risk residential program after the trial court departed from the Department of Juvenile Justice's recommended restrictiveness level. Minor waived trial and entered plea on charges of burglary and trespass. Pending the disposition hearing, minor was arrested for violating home detention. The predisposition report noted the minor's risk to reoffend was high, and recommended commitment to a nonsecure residential program. Additionally, a multidisciplinary commitment staffing was held and a comprehensive evaluation was prepared in advance of the disposition hearing. However, the comprehensive evaluation report was not available at the time the PDR was completed. At the disposition hearing, the state agreed with DJJ's recommendation, while the defense recommended probation. The trial court disagreed, and after stating its reasoning, committed the minor to a high-risk facility. A written order explaining the reasons for deviating from the DJJ's recommendation for the restrictiveness level of commitment was not entered.

Section 985.433 (7)(b) F.S., sets forth the procedural requirements the court must follow should it depart from DJJ's assessment. Additionally, in *E.A.R. v. State*, 4 So. 3d 614, 634 (Fla. 2009), The Florida Supreme Court held that the statutory mandate requires trial courts to conduct a "more rigorous analysis before departing from the DJJ's recommendation." The appellate court stated that the requirements of *E.A.R.*, however, only apply to the second step of the disposition process if the court departs from the recommended restrictiveness level of commitment. Here, the appellate court found that the trial court did not

set forth a comprehensive and thorough basis for its departure from the DJJ's recommendation. The record showed that the trial court was concerned that the PDR assessed the minor's risk to reoffend as high. Additionally, the trial court expressed concern that the minor was ungovernable and "does as he pleases." Furthermore, the trial court failed: to "[a]rticulate an understanding of the respective characteristics of the opposing restrictiveness levels; to meet the second prong of the E.A.R. test by not justifying the departure against the needs of the child. The appellate court went on to specifically remind delinquency judges that "deviating from a DJJ's recommendation is a difficult matter pursuant to the dictates of E.A.R. In order to deviate lawfully, a trial court must do more than place generalized reasons on the record; it must engage in a well-reasoned and complete analysis of the PDR and the type of facility to which the trial court intends to send the child. This is no easy task and will take time and consideration." Affirmed in part; reversed in part; and remanded.

[https://www.4dca.org/content/download/634490/7209165/file/190817\\_DC08\\_04292020\\_094407\\_i.pdf](https://www.4dca.org/content/download/634490/7209165/file/190817_DC08_04292020_094407_i.pdf)

*State v. I.J.*, 258 So. 3d 473 (Fla. 4<sup>th</sup> DCA 2018)

#### [DISPOSITION REVERSED AND REMANDED FOR MANDATORY SECURE DETENTION SENTENCE](#)

The State appealed the trial court's delinquency disposition and claimed that the trial court erred by failing to commit the child to a mandatory fifteen days in secure detention for the offense of armed burglary of a conveyance. The appellate court reversed and remanded the case, agreeing that the fifteen days' detention was a mandatory enhancement for the disposition under the facts of the case. The child pled to armed burglary of a conveyance, grand theft of a firearm, burglary of a conveyance, and resisting without violence, however, the court did not order the 15-day detention as required. The appellate court reversed because the statute requires the fifteen-day mandatory secure detention sentence; and the notice requirements were satisfied.

[https://www.4dca.org/content/download/405209/3640286/file/172982\\_1709\\_11072018\\_09044747\\_i.pdf](https://www.4dca.org/content/download/405209/3640286/file/172982_1709_11072018_09044747_i.pdf)

*Sargeant v. State*, 242 So. 3d 439 (Fla. 4<sup>th</sup> DCA 2018)

#### [PETITION FOR WRIT OF PROHIBITION DENIED](#)

The youth challenged his prosecution in Broward adult circuit court for burglary of an unoccupied conveyance which was allegedly committed when he was fourteen years old. His case was transferred to adult court based on an unrelated and pending prosecution as an adult in St. Lucie County, which is in a different judicial circuit. The juvenile contended that, under § 985.557(3)(b), F.S., transfer to adult court is authorized only if adult charges are pending in the same circuit. The appellate court rejected this argument because the plain language of the statute describes the state-wide effect of a direct file of adult charges against a juvenile. The transfer of felony cases, which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has

not been made, to the adult court for prosecution of the child as an adult is not limited to felony cases pending within the same circuit.

[https://www.4dca.org/content/download/186731/1656403/file/173753\\_1703\\_04042018\\_09402988\\_i.pdf](https://www.4dca.org/content/download/186731/1656403/file/173753_1703_04042018_09402988_i.pdf)

## **5<sup>th</sup> District Court of Appeal**

S.C.B. v. State, \_\_\_ So. 3d \_\_\_, 2019 WL 3047340 (Fla. 5th DCA 2019)  
**ADJUDICATION OF DELINQUENCY ON MULTIPLE FELONIES IN FOUR SEPARATE CASES REVERSED**

A juvenile appealed from an order adjudicating him delinquent, following a plea, on one count of dealing or trafficking in stolen property, a second-degree felony; four counts of burglary of a conveyance and two counts of grand theft, which are third-degree felonies; as well as two counts of petit theft and one count of misdemeanor possession of cannabis. The trial court committed the juvenile to a non-secure residential program to be followed by probation after his release from commitment. Upon appeal, the appellate court held that the trial court erred when it adjudicated the juvenile delinquent of dealing or trafficking in stolen property when he did not plead guilty to that charge. “[T]his is significant because not only was he wrongfully adjudicated, but also the recommended dispositions on all four cases contained in the Department of Juvenile Justice's Pre-Disposition Report, which the trial court followed, were based, to a significant extent, on the DJJ's belief that the juvenile had pleaded guilty to dealing or trafficking in stolen property, which was the most serious charge that he faced.” He did not plea to that count. It was held that all four disposition orders were to be vacated and a new disposition hearing be held with a corrected predisposition report.

[https://www.5dca.org/content/download/531702/5901119/file/182859\\_1260\\_07122019\\_09071831\\_i.pdf](https://www.5dca.org/content/download/531702/5901119/file/182859_1260_07122019_09071831_i.pdf)

J.P.S. v. State, 277 So. 3d 722 (Fla. 5th DCA 2019)  
**WITHHOLDING ADJUDICATION OF DELINQUENCY WITH FIVE YEAR TERM OF PROBATION REVERSED** A 14-year old juvenile appealed from an order withholding adjudication, following a plea to one count of lewd or lascivious conduct in violation of s. 800.04(6)(c), F.S. The court withheld adjudication of delinquency and placed the juvenile on probation until he turned nineteen years old. Pursuant to § 985.475(2)(e), F.S., the court also adopted the Department of Juvenile Justice's proposed juvenile sexual offender treatment plan and imposed it as a condition of probation. Defense counsel objected to the term of probation until the youth's nineteenth birthday, because it extended beyond the three-year maximum period stated in s. 985.475(2)(e), F.S. The appellate court held that the trial court was limited to imposing a three-year term of probation, rather than the nearly five-year term imposed. The disposition order was reversed, and the case remanded for resentencing.  
[https://www.5dca.org/content/download/531700/5901095/file/182663\\_1260\\_07122019\\_09030566\\_i.pdf](https://www.5dca.org/content/download/531700/5901095/file/182663_1260_07122019_09030566_i.pdf)